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TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1883.

No. 335.

JAMES M. NICKLE, IN HIS OWN RIGHT AND AS ADMINISTRATOR OF JAMES NICKLE, DECEASED, AND OF ISAAC NICKLE, DECEASED, APPELLANT,

vs.

WILLIAM A. STUART ET AL.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE DISTRICT OF WEST VIRGINIA.

FILED OCTOBER 7, 1884.

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1 UNITED STATES OF AMERICA, } ss:
District of West Virginia. }

Pleas before the Hon. John J. Jackson, judge of the district court of the United States for the district of West Virginia, at Charleston, on the 16th day of May, 1881, and in the 106th year of Independence.

JAMES M. NICKELL *vs.* WM. A. STEWART *et al.*,

On bill of review in case of

C. S. GRAY *et al. vs.* WHITE SULPHUR SPRINGS CO. *et als.*

Record.

Be it remembered, that at a district court of the United States for the district of West Virginia, held at Charleston, on the 16th day of May, 1881.

Order.

CHARLES S. GAY and others, Complainants,
vs.
WHITE SULPHUR SPRINGS Co. and others, Defendants. } In Chancery.

James M. Nickell, in his own right and as administrator of James Nickell, and as administrator of Isaac Nickell, by his counsel, Thomas B. Swann and James W. Davis, Esqs., this day tendered in open court a bill of review, praying to review the decree of sale and the de-
2 cree of confirmation and all the decrees and proceedings heretofore had in this suit; and thereupon James H. Ferguson, counsel for the purchaser in this cause, William A. Stuart and William A. Quarrier, counsel for the claimants, appeared to and resisted the motion to file said bill of review; and the said motion being argued and considered by the court, the court is of opinion to and doth decide to refuse to allow said bill to be filed, and thereupon the said bill of review is rejected.

And thereupon, on the motion of the said Nickell, an appeal is awarded to him from this decree to the Supreme Court of the United States, upon condition that the said Nickell, or some responsible person for him, shall, within 30 days, execute an appeal bond in the penalty of $1,000, conditioned according to law, with good security.

And thereupon James W. Davis, as responsible person for said Nickell, and with Thomas B. Swann, his security, executed said bond, which said bond was by the court approved, and said appeal perfected.

The following is a copy of the bill of review above referred to:

3 *Bill of Review.*

To the Hon. J. J. Jackson, judge of the district court of *of* the United States for the district of West Virginia, held at Charleston:

Humbly complaining, your orator, James M. Nickle, a citizen of the State of West Virginia, in his own right and as administrator of James Nickle, deceased, and of Isaac Nickle, deceased, respectfully represents to your honor:

That heretofore, to wit, at March rules of said court, 1868, Charles S. Gay and Margaret L., his wife, and others filed their bill in your honor's court, to which your orator aforesaid, in his own right and as administrator of James and Isaac Nickle aforesaid, and others was a party def'd't, in these words:

Copy of Original Bill.

The bill of complaint of Charles S. Gay and Margaret L. Gay, his wife; John Echols, trustee of Margaret L. Gay; Jane C. Boyd, and John W. Johnston, her trustee; and Elizabeth E. Crockett, citizens and inabitants of the State of Virginia, who sue as well for themselves as for all other creditors who have liens upon the real estate belonging to the White Sulphur Springs Company, situate in the county of Greenbrier, West Virginia, whether said liens were created by the said company, or by James Calwell, Frances Bedford, Elizabeth Copeland, William B. Caldwell, James H. Calwell, Lewis M. Calwell, John B. Calwell, Edmund S. Calwell, Henry B. Calwell, and Bedford Calwell, or by any or either of them, against the
4 White Sulphur Springs Company, a corporation doing business and having its principal office in the State of West Virginia; William B. Calwell, administrator of James Calwell, deceased; John H. Copeland and Samuel Price, executors of Frances Bedford; Elizabeth Copeland, Fleming B. Miller, trustee; William B. Calwell, Mason Mathews, trustee; Lewis M. Calwell, Edmund S. Calwell, John B. Calwell, Bedford Calwell, Joel McPherson; A. Caperton, in his own right and as executor of Hugh Caperton, deceased; A. Caperton and Andrew Campbell, surviving executors of Robert Campbell, deceased; Samuel Price, Mason Mathews, and Thomas Mathews, executors of Henry Erskine, deceased; Samuel C. Beard, administrator of Christopher Beard, deceased; Samuel Tuckwiller, administrator of David Tuckwiller, deceased; Paul McNeal, James M. Nickell; Thomas Mathews, surviving partner of Mathews, Paxton & Co.; Robert Dixon; Margaret P. Callison, executrix of Elisha Callison, deceased; John Lydenstricker, administrator of John Surbaugh, deceased; Floyd Estill, Jacob Eakle; James M. Nickell, administrator of James Nickell; James Jarrett, Sr., Samuel Price, Jesse Bright, George White, Samuel McClung, James K. Hull; Andrew Johnson, administrator of George Johnson; James H. Nesmith, Patrick Beirne, Thomas A. Bell, Samuel C. Ludington, George L. and W. H. Peyton, and David Watts, citizens and inhabitants of
5 the State of West Virginia, and the judicial district thereof.

To the Hon. John J. Jackson, Jr., judge of the United States district court for the judicial district of West Virginia, sitting at Charleston:

Humbly complaining to your honor, the complainants named in the caption of this bill respectfully represent that on the 3d day of March, 1836, James Calwell and Polly, his wife, Frances Bedford and Elizabeth Copeland, then being the owners in fee of a tract of land situate in the county of Greenbrier, and now within the limits of this State, containing nine hundred and fifty acres, and upon which is situate the celebrated mineral spring known as the Greenbrier White Sulphur, conveyed the same to Andrew Stevenson, John T. Brown, Fleming B. Miller, and James McFarland, Jr., in trust, to secure and indemnify parties who would subscribe to a loan of $100,000; and the loan of $100,000, secured by the deed, is still due and unpaid, with interest thereon from January 1st, 1862, (interest prior to January 1st, 1862, has been paid. For forms of certificates, see copy,) which the said owners desired to effect, the said loan to bear interest, and to be repaid in five years from date. The first deed recited that to this loan Richard Singleton, of the State of South Carolina, had subscribed the sum of $30,000; John Tabb, of Norfolk, had subscribed the sum of $15,000; John T. Wil-
6 cox, of Petersburg, had subscribed the sum of $15,000, and James McFarland, of Petersburg, had subscribed the sum of $10,000, for which sums they severally received certificates; and in order to raise the residue of said sum of $100,000, the said grantors executed six certificates of debt, each for the sum of $5,000, and deposited the same in the Bank of Virginia, at Richmond, with authority to said bank to sell the same, all of which will appear by reference to a copy of said deed, herewith filed and made part of this bill, and marked Exhibit No. 1.

Three of the trustees in said deed, to wit, Andrew Stevenson, John T. Brown, and James McFarland, have departed this life. These comp'ts are not aware how many of the certificates of debt of the denomination of $5,000, which were placed in the hands of the Bank of Virginia, were sold by said bank; nor do they know how much of the indebtedness secured by said trust deed has been paid.

That on the 3d day of November, 1841, the said James Calwell and Polly, his wife, Wm. B. Calwell, Frances Bedford, and Elizabeth Copeland conveyed to Mason Mathews and Gustavus A. Crockett, trustees, the above-described tract of land, containing, as aforesaid, 950 acres; also a tract of land known as the Brown tract, containing one thousand acres; also a tract of 5,000 acres, (examine deed of November 3d, 1841,) purchased of Hector & French; also a
7 tract of 800 acres, purchased from Richard Dickson, in trust, to secure Henry Erskine the sum of $34,297, with interest from date; and the further sum of $3,150, with interest from date. There was also conveyed by said deed a number of slaves, horses, sheep, and hogs, and a very large quantity of beds, mattresses,

sheets, and other furniture, which had heretofore been used about said watering place; all of which will more fully appear by reference to an office copy of said deed, herewith filed as Exhibit No. 2. One of the trustees in this deed, Gustavus A. Crockett, has departed this life. The deed also provided that if default was made in the payment of the sum secured by this deed on 3d day of Nov., 1842, that the trustees should make sale. That on the 10th day of October, 1842, Polly Calwell, the wife of James Calwell, having departed this life, and her interest having descended to her children, James Calwell, the husband, together with the children of said Polly, to wit, Wm. B. Calwell, James H. Calwell, Lewis M. Calwell, Edmund S. Calwell, John B. Calwell, Henry B. Calwell, and Bedford Calwell, together with Frances Bedford and Elizabeth Copeland, conveyed all the lands and personal estate mentioned in Exhibit No. 2 to William Cary and Joel McPherson, in trust, to secure a large number of creditors, whose names are fully set out and described in said deed, and whose debts are enumerated in a schedule attached thereto, and all of said creditors who reside in this judicial district are hereafter made party defendants to this bill. This deed provided
8 that if default should be made in the payment of the debts in said deed secured, and said default should continue until 1st January, 1848, that the trustees should make sale. One of the trustees, William Cary, has departed this life. A copy of this deed is herewith filed and made a part of this bill, marked No. 3.

On 22d day of November, 1853, John B. Calwell, Henry B. Calwell, Lewis M. Calwell, Edward S. Calwell, Bedford Calwell and wife, William B. Calwell and John F. Miller, heirs-at-law of James Calwell and Polly, his wife, and Elizabeth Copeland and Frances Bedford being the then owners of the White Sulphur Springs estate, conveyed the same to William H. McFarland, in this conveyance there is embraced all the tracts of land mentioned and described in Exhibits "2 and 3," as well as the original tract upon which the spring is situate. The whole estimated to contain about 7,000 acres. But this conveyance was made upon the following trust, that the said McFarland should make sale of the estate; that he should retain ten per cent. commissions; that out of the proceeds he should pay off the debts due and secured upon the land, whether by trust deed, mortgage, or otherwise, and after the payments of said debts the residue should be paid over to the grantors, &c., &c.

An office copy of this deed is herewith filed, marked No. 4. On 1st of May, 1857, Wm. H. McFarland and Wm. B. Calwell
9 executed a deed by which the said McFarland conveyed the White Sulphur Springs property (estimated as aforesaid as 7,000 acres) to Jeremiah Morten, Mathew F. Maury, Allen F. Caperton, R. H. Maury, Alexander K. Philips, A. F. D. Gefferd, James Hunter, and J. Warren Slaughter; and the said Wm. B. Calwell conveyed to the same parties all the household and kitchen furniture, farming utensils, horses, cattle, hogs, &c., &c., upon the premises. The consideration for these purchases was $600,000, of which $200,-

000 was paid in cash, and as it was estimated that there were debts due and secured upon the property to the amount of $400,000, the purchasers covenanted and agreed that they would accept a charter heretofore granted them by the Legislature of Virginia, and would organize under the same, and issue to the creditors the bonds of the company for their several debts, and would secure the said bonds by trust deed executed upon the entire property, with power of sale in the event the said bonds were not paid within ten years from their date. A copy of said deed is herewith filed, marked Exhibit No. 5.

On 1st May, 1857, Jeremiah Morton and wife, Mathew F. Maury and wife, Robert H. Maury and wife, A. F. D. Gefferd and wife, A. W. Slaughter and wife, James Hunter and wife, Allen T. Caperton and wife, and Alexander K. Philips conveyed all the White Sulphur Springs estate (estimated as aforesaid at 7,000 acres) to the White Sulphur Springs Company, a corporation created by the State
10 of Virginia. A copy of this deed is herewith filed, marked Exhibit No. 6.

On 15th October, 1857, the White Sulphur Springs Company executed a deed of trust to Peachy R. Grattan, John Echols, and Robert F. Dennis, trustees, to secure all the creditors who had liens against the White Sulphur Springs estate, and all those who had just claims against James Calwell and Wm. B. Calwell for debts incurred in operating said springs, although they had no liens on the estate itself. This deed conveyed the entire estate, (estimated at 7,000 acres,) and provides that the Calwells shall be released from the debts, and that the company shall execute its bonds for the said claims, with interest computed up to the 15th day of October, 1857, payable ten years after date, interest to be paid annually, but all the creditors were to retain their original priority of lien, no more bonds were to be executed for the debts secured by the trust deed marked Exhibit No 1, said deed was to remain and retain its original priority. A schedule showing the names of the bondholders, the amounts due them, &c., &c., is filed and made a part of this deed. This deed also conveyed a large quantity of personal property, which is also described in a schedule filed with the deed, and is subject to the general trusts mentioned. A copy of this deed, together with the several schedules attached thereto, are herewith filed as parts of this bill, marked No. 7.

11 On the 15th Oct., 1857, the said White Sulphur Springs Company executed a second deed of trust to the said Echols, Grattan, and Dennis, explaining and defining the powers of the trustees and the rights and powers of the creditors. An office copy of said deed is herewith filed as Exhibit No. 8. On 3d September, 1858, the said White Sulphur Springs Company executed a third deed of trust to the same trustees, securing certain creditors whose names and debts are fully described and set out in the said deed. A copy of said deed is herewith filed and made part of—marked Exhibit No. 9. On 18th April, 1861, the said White Sulphur

Springs Company executed a deed of trust to Thomas Mathews and Joseph J. Halsey, trustees, by which they conveyed the original estate, estimated as aforesaid at 7,000 acres, together with also a tract of land situate on the turnpike road leading from White Sulphur Springs to Covington, containing 2,800 acres, purchased of Hokes, in trust to secure seventy-five coupon bonds, each for the sum of $1,000, each executed by one or more of the following persons, to wit, Jeremiah Merton, A. T. Caperton, J. Presser Tabb, Robert B. Bolling, Richard H. Dulany, Philip St. George Cocks, and R. W. Carter, on 15th January, 1861, payable two years after date; some of these bonds were executed by one of the above parties alone, some of them by two of the above parties, and some by three of them, and all of said bonds were sold or discounted
12 for the benefit of the company. Also to secure the payment of one hundred and thirty-two coupon bonds of the aggregate value of $66,000, and to indemnify and save harmless the parties who issued the first-named bonds, and to indemnify and save harmless the same parties who endorsed the last-named bonds. This deed includes all the personal property used in and about the springs. A copy of said deed is herewith filed, marked Exhibit 10.

All the deeds referred to in this bill are duly and properly recorded in Greenbrier county, where the lands are situate.

On the 8th day of January, 1868, Allen T. Caperton and Wm. B. Calwell, who had been duly authorized by a resolution of the board of directors of the White Sulphur Springs Company, executed a lease to George L. and W. H. Peyton, by which they demised the entire estate of the company to the said Peytons for the annual rent of $12,000 per annum for the term of five years, beginning on 1st day of April, 1869, the rent to be paid to R. H. Maury, treasurer of the company, and by him to be applied as follows: $1,000 per annum to Wm. B. Calwell, the presinent of the company, and the balance to be applied "to the interest of the debts known as the Singleton debts and the Erskine debt," meaning thereby the debts fully described and set out in the deeds of trusts filed herewith, and marked Exhibits Nos. 1 and 2. These complainants allege
13 that R. H. Maury is a non-resident of this judicial district, and that he resides in Richmond, Virginia, and that complainants do not desire at this time to disturb the lease so made as aforesaid, but rather to continue the same until the proper accounts are taken and the cause matured for a decree of sale. But they allege that these rents should be retained and kept within the jurisdiction and under the control of the court, and be by the court applied to the purpose specified in the lease, to wit, the payment of the interests on the debts which constitutes the first liens on the property. That there is danger that if these rents are allowed to be taken out of the jurisdiction of the court that they be attached and sequestered, and applied to debts of *and applied to of* an inferior dignity. A copy of the lease is herewith filed and marked Exhibit X.

It will be recollected that by the deed of 3d November, 1841, executed by James Calwell and others to Mathews and Crockett, to secure Henry Erskine, (Exhibit No. 2,) the said Erskine acquired the second lien in the tract of 950 acres, upon which the main White Sulphur Springs and all the hotels, cabins, buildings, out-houses, &c., &c., are situated, and the first lien upon the the othert ract of land, which constitute the residue of the 7,000 acres, which now constitute the main estate of the company. About the — day of ——, 18—, [1848] Henry Erskine departed this life, having first made and published his last will and testament. A copy of which is made an exhibit to this bill, marked Exhibit No. 11. By this will Samuel Price, Mason Mathews, and Thomas Mather were appointed executors, and the debt due said Erskine under and by virtue of the trust deed, Exhibit No. 2, was devised to Thomas Mather, trustee, for the sole and separate use of three daughters of the testator, to wit: Margaret L. Gay, wife of Charles S. Gay, Jane C. Boyd, (now a widow,) and Elizabeth E. Crockett, (also a widow,) jointly and equally. Under the provisions of the deed of trust, executed by the White Sulphur Springs Company on the 15th day of October, 1857, the said company aggregated the debt due the estate of Henry Erskine and issued and delivered to Samuel Price, Mason Mathews, and Thomas Mathews three coupon bonds, each for the sum of $21,848.69, and bearing interest from date, having coupons attached for said interest. The executors assigned one of these bonds to the trustee of Margaret L. Gay, and one to the trustee of Jane C. Boyd, and the other to the trustee of Elizabeth E. Crockett. A portion only of the interest of each of these bonds has been paid; the principal and the larger portion of the interest of the bonds is now due and unpaid. Copies of the bonds are herewith filed and made a part of this bill, marked Nos. 12, 13, and 14. Thomas Mathews resigned his position as trustee under the will of Henry Erskine, and by a series of decretal orders, herewith filed, John Echols became trustee for Margart L. Gay, John W. Johnson became trustee for Jane C. Boyd, and Samuel Price became trustee for Elizabeth E. Crockett.

[First, see deed of 1841.]

14

15

The complainants in this cause are anxious to enforce the collection of the three coupon bonds last herein described, and for that purpose have resorted to this honorable forum.

They allege that the creditors who have liens on the estate herein sought to be subjected to sale are exceedingly numerous; that a very large number of them reside outside of the jurisdiction of this court, and that, by the manner in which these complainants have sued, all creditors have a right by petition to be made parties to the same; if they be citizens of West Virginia, parties defendants; if citizens of other States, parties plaintiffs; and that full provision is made by the structure of these bills to protect all classes of creditors. They are therefore advised that they are not bound to make

the non-residents, persons who are interested in the subject-matter, parties d'f'ts to this suit. James Calwell has departed this life, and Wm. B. Calwell has qualified as his adm'r; Frances Bedford has departed this life, and John H. Copeland and Samuel Price are her administrators; Hugh Caperton has departed this life, and A. T. Caperton is his executor; Robert Campbell has departed this
16 life, and A. T. Caperton and Andrew Campbell are his executors; Christopher Beard has departed this life, and Samuel C. Beard is his administrator; David Tuckwiller has departed this life, and Samuel Tuckwiller is his administrator; Elisha Callison has departed this life, and Margaret P. Callison is executrix; John Surbaugh is dead, and John Lydenstricker is his administrator; James Nickell is dead, and James M. Nickell is administrator; George Johnson is dead, and Andrew Johnson is his administrator. Forasmuch, then, as the complainants are without remedy, save in this forum, they pray that the defendants named in the caption of this bill, who are all residents of this judicial district, (Henry B. Miller is a resident of Botertourt county, Virginia,) be made parties d'f'ts to this bill; that this cause be referred to a master commissioner; that all creditors claiming lien be required to prove the same; that proper accounts be taken; that priorities be established; that the lands and personal property of the White Sulphur Springs Company be subjected to sale; that until a sale is decreed that the court, by its proper officers, collect and pay out the rents to the parties who have the first lien on the property; that these complainants have satisfaction of the debts due them, and that they have such other, further, and general relief as the exigencies
17 of their cause require.

CHARLES S. GAY.
MARGARET L. GAY.
JOHN ECHOLS.
JANE BOYD.
JOHN W. JOHNSON.
ELIZABETH CROCKETT.

MILLER & QUARRIER, *Sol's.*

Bill of Review Continued.

On the 23d of April, 1868, this cause was referred to Commissioner H. M. Mathews to take and report an account of liens of all kinds upon the White Sulphur Springs property, to whom they belonged, and their priorities when created, and upon what property they were liens. (Page 607 of book 1.) Another decree was afterwards made in the cause, recommitting this account to Commissioner H. M. Mathews. (Book 2, page 146.) At page 232 of book 2 the court entered a decree deciding Joel McPherson entitled to hold the legal title to the interests in these lands formerly held and owned by William Bedford and Frances, his wife, John Copeland and Elizabeth, his wife, in the tract of 950 acres, a part of the White Sulphur Springs property; and that the deed of trust of 3d

of March, 1836, held *held* by Richard Singleton's heirs and others is the first lien on 200 acres, part of same. At page 421, book 2, there was a decree recommitting this cause to Commissioner
18 H. M. Mathews for further report. At page 436, book 2, H. M. Mathews, trustee, is made a party in the room of F. B. Miller, trustee, removed on 28th April, 1876. (Page 660, book 2.) Commissioner Mathews' 1 and 2 reports partially confirmed and recommitted to him to take and report further the omitted creditors and the amounts and priorities held by them. Further time was given these creditors to lay their claims before the commissioner; after which there was no further report of commissioner on that subject or decree settling priorities. On 5th May, 1877, (book 3, page 78,) there was a decree of sale, and H. M. Mathews and others were appointed commissioners to make the sale. Before making the sale they were required to give bond, approved by the judge of this court, in the sum of $120,000 for the faithful discharge of their duties as commissioners. (Book 4, page 217.) Commissioners tendered and filed their report of sale. Alexander F. Mathews was the purchaser, at $300,000. Oct. 13th, 1879, W. A. Stuart and others excepted in writing to confirmation of this sale. On 18th Nov., 1879, W. A. Stuart filed his affidavit in this connection, a copy of which, as of all other papers in the record referred to, will be filed with this bill as parts thereof. In that affidavit Mr. Stuart uses this language: "W. A. Stuart makes oath as follows, that long before the institution of the suit above mentioned"—Gay *vs.* The White Sulphur Springs Company—"he was a large creditor
19 of the White Sulphur Springs Company, and is now much the largest creditor of said company.

He owns or controls the Singleton trust, upwards of	$120,000
Of intermediate judgments	25,000
Of the principal of the Erskine trust over	40,000
Of the trust of 1842, principal and int., about	160,000
In all say	$345,000

* * * * * * * *

Affiant has time and again said he would not ask the court to confirm a sale that did not pay the Erskine debt.

* * * * * * * *

Affiant then came to the conclusion that probably no sale could be made at a fair price until the western connection of C. & O. R. road was completed. Affiant had no fear that the court would confirm any bid at less than $400,000 or $500,000, or perhaps $500,000 or $600,000.

Affiant understood the court to say as much in the presence of parties and counsel, sitting in chambers at White Sul. Springs, a few years since, when the subject of a sale or the extension of a lease of the property was under consideration.

* * * * * * * *

Prior to 1873, affiant had no interest in the Singleton or Erskine trusts.

* * * * * * * *

Affiant believed he would not be prejudiced by a failure to bid at the late sale, and that there would be no difficulty in setting aside a sale at a price so wholly inadequate. * * * *

That, as a matter of fact, the unfinished part of the C. & O. R. road, between Huntington, West Va., and Mt. Sterling, Ky., has not yet been completed, but in the fall of 1879 arrangements were
20 made by the C. & O. R. road for its completion, a fact known to Wm. A. Stuart, and in the early spring of 1880 a large force was put on the work, and it has been completed to Ashland, and the cars run to Ashland, since June, 1880, and the entire line is under contract to Mt. Sterling, Ky., and much work done between Ashland and Mt. Sterling. By the terms of the contract between the C. & O. R. road and the contractors it was to have been finished to Mt. Sterling by 1st January, 1881. It may be 1st of June, 1881, before the western terminus is entirely completed. Upon this affidavit the sale to Alex. Mathews was set aside by decree of court, at fall term, 1879, and the court further ordered the same commissioners, in a further decree then made in the cause, to proceed to sell the property on the 31st March, 1880, under decree of 5th of May, 1877, modified by 2 months' notice of time, &c., of sale. This decree was entered Nov., 1879, Book 4, which was done, and Wm. A. Stuart was reported by the commissioners as the purchaser of all the White Sulphur Springs property; and the court, by a decree of 4th May, 1880, confirmed the commissioners' report and sale to Wm. A. Stuart at $340,500, with George Peyton surety in the 1st deferred payment, Book 4, page 365. Your orator's interest, in his own right and as administrator of James and Isaac Nickell, is fully set forth in the cause and the reports and proceedings had therein. All the bonds and evidences of debt of the White Sulphur Springs
21 Co. held by him are still his own and exclusive property. That Nat. Harrison and his estate have no interest therein.

Your orator charges that at the time of bringing the suit of C. S. Gay and others *vs.* The White Sulphur Springs Co. said White Sulphur Springs Co. was a citizen corporation of State of Virginia and not of West Va., and principal place of business and office was at Richmond, in State of Virginia.

That at that time, March, 1868, said Wm. A. Stuart was, and all his life had been, and still is, a citizen of State of Virginia, and was a necessary party to the cause, but was not made a party thereto; and

That at the same time the trustee, F. B. Miller, was a citizen of the State of Virginia, and the other trustees, A. Stevenson, J. T. Brown, and James McFarland, were dead; that they were citizens of State of Virginia at the time of their death, and that Brown and McFarland left heirs-at-law, whose names are unknown to your

orators, citizens of Virginia. Andrew Stevenson left a son, a citizen of State of Ky.; and

The beneficiaries, John Tabb, J. T. Wilcox, and James McFarland, named in the deed of 3d March, 1836, were citizens of Virginia, or if any of them were dead in 1868 they left representatives and heirs-at-law, citizens of State Virginia, whose names are unknown to your orator; and

22 That the trustee, G. A. Crockett, named in the Erskine trust deed, was a citizen of State Virginia, and died in Virginia, leaving heirs-at-law, citizens of Virginia, when said suit was brought, whose names are unknown to your orator, but known to complainants, and complainant, Elizabeth Crockett, died before any decree of sale was made, and the cause was not revived; and

That the Bank of Virginia, named in said deed trust, was when the said suit was brought in 1868, a citizen of State of Virginia; and

That at that time Wm. H. McFarland, named as trustee and grantor in several deeds of 1st May, 1857, and J. Morton, M. F. Maury, R. H. Maury, A. R. Phelps, A. F. D. Gefferd, J. Hunter, and J. W. Slaughter, named in said deed, were citizens of State Virginia at that time; and

That at that time Peachy R. Gratton, the trustee named in the trust deed of 15th Oct., 1857, was and still is a citizen of the State of Virginia, and that at that time the Farmers' Bank of Va., was a citizen corporation of State of Va., and also Wm. H. McFarland, named in said trust deed, and Wm. Skeen, and sundry others of the creditors, named in the schedule attached to said trust No. 7, were citizens of State of Va., and that at that time J. Morton, J. P. Tabb, R. B. Bolling, K. H. Dulany R. W. Carter, parties named in the deed of 18th April, 1861, were citizens of State of

23 Virginia, and Philip St. George, Coche, also named in said deed, was dead, he having a son named John Coche, also at that time a citizen of State Va.; and

That at that time the R. H. Maury, mentioned in connection with the lease to Peytons, was a citizen of State of Va. Your orator is advised that if the proper parties, resident of Virginia, as aforesaid, had been made parties def'ts to said suit of C. S. Gay and others *vs.* White Sulphur Springs Company and others, it would have ousted the jurisdiction of this court, and that no proper bill could be framed for the purpose of enforcing the several liens and trusts aforesaid, in the absence of the several trustees and parties beneficiary, and heirs-at-law of trustees and parties beneficiary, as above enumerated and set out. Your orator is advised that this court had no jurisdiction of said suit, and that it ought to have been dismissed, and that no sale made in that case is valid, but wholly null and void, and that the legal title to the property of the White Sulphur Springs Co. still remain in the several trustees and parties aforesaid, not parties to said suit, but who should have been made parties to the cause before any final decree was entered therein by personal or published service of process. That F. B. Miller, trustee,

was a party def'd't to said bill, and was at that time a citizen of the State of Virginia, of which State compl'ts were citizens.
24 That the heirs-at-law of Frances Bedford, James Calwell, should have been made parties to this cause.

Your orator further charges that the property of the White Sulphur Springs Company was at the day of sale worth $1,000,000, and it only sold for $340,500.00, or ⅓ its value, and was purchased by Wm. A. Stuart, a creditor, who was legally disabled to purchase the same, by reasons of matters set out in his affidavit aforesaid, of the 19th Nov., 1879.

Your orator further charges that Wm. A. Stuart was not the sole purchaser at the commissioner's sale, but that other parties were interested with him in said purchase, and he calls upon said Stuart to name each and every person so interested, then or now, and how and when, and under what circumstances, and by whose agency, he or they became interested in said purchase, and who formed with him the syndicate of purchase prior to and on the day of purchase, and to this end your orator calls on Wm. A. Stuart to answer this bill, and every allegation thereof, specifically, and say further what improvements since his purchase have been put upon said springs property, and who contributed thereto in money, credit, time, or other thing, and when such contribution was made, and by whom, and to this end that he files his book of expense accounts and improvement accounts, and that he name every person now or then directly or indirectly interested with him in said purchase or
25 improvements, or in said property, and when each several interest arose, and the extent thereof, and what improvements have been made, or contracted to be made, upon said property since said purchase.

Your orators are advised and charge that Mason, Matthews, and A. T. Caperton, parties to the suit, died before any final decree was made in said suit, and the cause has not been revived as to them.

Your orator charges that at the time of the sale in 1880, Wm. A. Stuart controlled, as agent and representative for the owners thereof, a large interest in the Singleton and Erskin's trusts, which he did not own, and other debts owned by creditors of the White Sulphur Springs Company and not by himself.

Your orator charges that there never has been a final settlement of priorities.

Your orator charges that it was ever to decree a part of this land, to wit, that once claimed by Copeland and others, as set out in his petition to Joel McPherson, to the prejudice of trust creditors of White Sulphur Springs Company, as set out in the decree assigning it to Joel McPherson, as the legal owner thereof, and prays that that decree may be reviewed and set aside.

Your orator asks the bill of C. S. Gay and others against the White Sulphur Springs Company and others be dismissed for want of jurisdiction of it in this court to entertain the same, for the want

of jurisdiction for *the* reasons and want of proper parties thereto as aforesaid, and for other reasons aforesaid.

Your orator further charges that commissioners of sale, H. M. Matthews and others, never gave the bond before the judge of this court, in the sum of $120,000.00, as required by the decree of sale, and that therefore any sale made by them under said decree is void; that no legal title was sold, and that parties who wished to
26 purchase the property were deterred from bidding, because they would get only an equity, and would not get the legal title of anything under a decree of sale in that case made, and therefore the property failed to bring its value or ⅓ of its value at said sale.

Your orator charges that the property ought to have been and was not advertised for sale in pursuance of the requirements of the several trust deed aforesaid.

Your orator further charges that Wm. A. Stuart, and those in interest with him, after the sale of 1880, and after the purchase of Wm. A. Stuart of said land, for purposes best known to themselves, did pay, or agree to pay, other creditors mentioned in some of the trust deeds aforesaid, whose claims were not covered by the $340,500.00, or their representatives or heirs-at-law, money or other thing; that threats were made by such parties in interest, as such creditors, that unless some arrangements were made with such parties they would resist confirmation of sale made to Wm. A. Stuart, and that such threats, prior to confirmation of such sale, came to the ears of Wm. A. Stuart, or those in interest with him as such purchasers, before the sale was confirmed. Wm. A. Stuart and those in interest with him are called on to disclose all knowledge of all these matters as fully as if separately and specially set down, and they thereto severally interrogated. Specially, they are asked to say, did he or they pay or promise to the heirs, administrators, or executor of A. T. Caperton, or of —— Erskine, Jane Boyd, Margaret Gay, and the heirs of E. Crockett, money after the sale, and before confirmation of the same, or to any other person having any claim as creditors of the property of the White Sulphur Springs Company; that the commissioners, Matthews and others, have not reported how they gave notice of the sale of spring of 1880, and your orator calls for proof of proper notice.

27 Your orator charges that the actings and doings set out in the record of this cause are a fraud on his rights; that the acts of William A. Stuart, and those [—] as co-purchasers of his in said property as above set out, are fraudulent and void; that it was a fraud in him, while acting as an agent of other creditors, to purchase the property as cheap as he could, and for that purpose to control the debts of other creditors of said property; that it was a fraud in him to make combinations—which it is charged he did make—with others to purchase the property; that it was a fraud in him, and those in interest with him, to prevent other creditors from resisting a confirmation of the sale by the means heretofore

charged on him and those in interest with him; that it was a fraud in him to conceal all of his co-purchasers from the court, and to take the confirmation of sale wholly to himself; that it was a fraud in him and them to associate with himself purchasers who had no right to buy at the sale; that the amount at which Wm. A. Stuart purchased the property is so grossly inadequate as to shock the moral sense and itself create a fraud, and the court will seize hold of any one of many irregularities and fraudulents acts and combinations of parties aforesaid to act fraud to set the sale aside.

Your orator further charges that the White Sulphur Springs property, just before our civil war of 1861, sold for $750,000; that the property was in no better repair, and of no greater value, but of less value, then than when purchased by W. A. Stuart and others in spring of 1880, at $340,500; that it appears from the Baltimore papers of late date that W. A. Stuart and those associated with him in the purchase of this property, to wit, J. W. Camden, H. M. Matthews, G. L. Peyton, and W. P. Thompson, lately met at Barnum's Hotel, in that city, and contracted for further and greater improvements in the property.

Your orator charges that the number of visitors to the springs in 1880 was as large as when the property was sold,
28 $750,000, just before the war, say 1857. The West Va. papers also mention the above-named parties as the purchasers in 1880.

Your orator calls *calls* upon each and all and any of these parties to say when this combination for purchase was first formed or spoken of, and who originated it, and the interest of each in it, and when and where said interest arose, and if they were all together lately at Baltimore, Md., and what was their business, and what they did together about the springs property, and when they met in Baltimore, Md., and who were present at the meeting, and how much money, time, advice, labor, or other thing, they have contributed severally to this enterprise, and when such contribution was made, and how they came to be at all interested in the purchase, and what returns they severally have received, or jointly, and what the gross earnings were for 1880 from said property, what became of them, and who of the above parties named as together at *Balt.* took any part in the management of the springs in the season of 1880, and what part and how generally he or they took part in the management of said springs in the season of 1880, and how long they or he was present at said springs in season of 1880, and how and by what means they met together at Baltimore as aforesaid, and under what preconcert and how long that preconcert had lasted prior to said meeting. Who got W. A. Stuart and J. N. Camden together as co-purchasers, who first named it to J. N. Camden and under what circumstances, when first said Stuart and said Camden met to confer on the subject and who was present at said first or any meeting between them on the subject of a joint purchase before the sale, and what passed at any such meeting, and when it and they

took place and who were there, and when the final arrangements of co-purchase was consummated, and who were present with them at that time, and what passed *in full or detail* between the parties present, and what each one said, and if they drew any papers on the subject of the purchase made and entered into in writing be-
29 tween them or any of them before the purchase. That they file with their answers copies of such papers, and give the name of the party who drew them or any of them and the place where drawn, and who was present at that or such times; and that they file with their answers copies from their account book at the springs for the season of 1880, showing in whose name the books were kept as owners of said property; and that they file true copies of *all letters* that passed between them, or any of them, the said Stuart, Camden, Matthews, Thompson, and Peyton, from or to any or either of them, among themselves at any and all times, *prior to* or *subsequent* to said sale of said property in spring of 1880, at which said Stuart was the ostensible purchaser, as reported by the commissioners to the court in said cause, *withholding no such letter* or *letters* or *true copies thereof*, with their several owners, *but that they surrender and file the same with their answers* hereto.

If any messages were, at any time, sent from one of them to any one or more of them verbal that they give the name of the bearers thereof, and the purport of any and all such messages, and withhold no such message or the bearer thereof in any case.

Your orator charges that a large number of the claims against said company, reported in Commissioner Matthews' 1 and 2 Reports filed, are paid, and were reported without claim before the commissioner, and should have been disallowed by the commissioner.

That the parties, in whose favor many of said claims are reported, never appeared before the commissioner in person or by affidavit to make claim thereto, all of which appears in the record, and that it was error to confirm the reports of Commissioner Matthews, No. 1 and 2, as they came before the court.

That Commissioner Matthews' reports No. 1 and 2 have
30 been lost or mislaid, and for some time have been missing from the file, so that they cannot be had or inspected by your orator. If he had them, he could more specifically point out the errors therein, and he reserves the right, upon their return to the file, to file any additional bill their presence may suggest as necessary.

That complainant, C. S. Gay, died before any final decree in said cause, and the suit was never revived as to him.

It asked that the court will review the proceedings, pleadings, and decrees made in said cause.

Your orator asks that the said Wm. A. Stuart and those in interest with him, when found out, all the parties to the bill of C. S. Gay against the White Sulphur Springs Co., and all other parties heretofore named in this bill, and their heirs and administrators, may be made parties defendants thereto and answer the same, where

process can be served on them directly, and where they are citizens of other States by order of publication; that they severally make true answer when they have severally been called on and generally pointed at to answer as fully as if specially interrogated thereto; that, if the court retain jurisdiction, the court will set aside the sale of the property made in 1880, and purchased ostensibly by Wm. A. Stuart; that the price of $340,500 is wholly inadequate, and that that, with the surrounding circumstances, will justify the court to do so, and that the court will direct all proper orders and decrees, and give general relief.

Wherefore— J. M. NICKLE, &c.,
By Counsel.

DAVIS & SWANN, *Sol.*

31 STATE OF WEST VIRGINIA, } *To wit:*
County of Greenbrier, }

This day J. M. Nickle, party complainant to the foregoing bill, came in person before me, and, after being sworn, says that the matters and things set forth in the foregoing bill so far as stated on his own knowledge are true, and so far as stated on information, he believes them to be true.

JAMES M. NICKLE.

Taken, sworn to, and subscribed before me, this 31st day of January, 1881.

JOHN A. PRESTON,
Notary Public for Greenbrier Co., W. Va.

The following is a copy of an affidavit attached to the foregoing bill of review:

Affidavit of Wm. A. Stuart, attached to Bill of Review.

In the United States District Court of West Virginia.

C. S. GAY, &c., *vs.* THE WHITE SULPHUR SPRINGS COMPANY.

W. A. Stuart makes oath, as follows:

1. That long before the institution of the suit above mentioned he was a large creditor of the White Sulphur Springs Company, and is now much the largest creditor of said company.

He owns or controls the Singleton trust, upward of	$120,000
Of the intermediate judgments, over	25,000
Of the principal of the Erskine trust, over	40,000
Of the trust of 1842, principal and interest, about	160,000
In all say	$345,000

32 2. Having this large interest as a creditor, he has watched the proceedings in this case, in order that the best possible sale of the property might be made, and not, as has been charged, to buy the property of the company at a sacrifice.

Affiant has all along expressed a willingness to buy the property, in connection with others, at a fair price.

He has refused, time and again, to unite with other parties to buy it at a sacrifice. Some of these refusals are of very recent date.

On this subject affiant refers to an affidavit filed by him in this case as far back as April 27, 1875, and makes the following brief extract therefrom:

"While affiant does not wish to buy said springs, either wholly or in part, he stands ready to aid in preventing a sacrifice of them, and has offered to take an interest, large or small, with some of the stockholders and creditors, with a view to make the property bring something like its value.

"Affiant has time and again said that he would not ask the court to confirm a sale that did not pay the Erskine debt."

3. It is true affiant has opposed long leases of the property, and has insisted on the property being offered at public sale, in the hope that a fair price could be obtained. It is also true that affiant has endeavored to form a company to buy the property at a fair price. The times being singularly unpropitious, these efforts failed, and your affiant, true to his purpose of not buying alone, or at a sacrifice, refrained from bidding when the property was offered by the commissioners publicly, in August, 1878, and, no one else bidding for the property as a whole, no sale was made. Affiant then came to the conclusion that probably no sale could be made at a fair price until the western connections of the Chesapeake and
33 Ohio railroad were completed. Affiant had no fear that the court would confirm any bid at less than four or five hundred thousand dollars, or perhaps five or six hundred thousand dollars. Affiant understood the court to say as much in presence of parties and counsel, while sitting in chambers at the White Sulphur Springs, a few years since, when the subject of a sale or the extension of a lease of the property was under consideration; and affiant has heard nothing to the contrary from the court since.

4. Prior to 1873 affiant had no interest in the Singleton and Erskine trusts. He after that time acquired the large interest which he now holds in those trusts. His object in acquiring claims secured in those trusts, was to be in a position to protect his large claims in the inferior class (1842,) by preventing a sale of the property at a sacrifice. He knows of no one now asking a confirmation of the late sale of the property to A. F. Matthews at $300,000, unless it be Mr. Matthews himself.

5. Affiant, having been the anxious creditor instead of the intending purchaser, believed that he would not be prejudiced by a failure to bid at the late sale, and that there would be no difficulty in setting aside a sale at a price so wholly inadequate.

W. A. STUART.

"Subscribed and sworn to before me, this 18th day of November, 1879.

JASPER Y. MOORE,
Clerk, D. C. U. S., D. W. Va."

"A true copy of the original on file in the cause mentioned
34 in the affidavit.

Teste: JASPER Y. MOORE,
Clerk, Dist. C't. U. S., D. W. Va."

The following are copies of decrees entered in said original cause of Gay *et al.*, *vs.* White Sulphur Springs Co. *et al.*:

"At a District Court of the United States for the District of West Virginia, held at Charleston, on the 23d day of April, 1868.

CHARLES S. GAY and others, Complainants
ag't
THE WHITE SULPHUR SPRINGS Co. and others, Def'ts. } In Chancery.

This cause came on this day to be heard on the bill and exhibits, the said bill taken for confessed, and set for hearing at the rules as to the defendants, The White Sulphur Springs Company, Allen T. Caperton, Samuel Price, Thomas Matthews, Mason Matthews, and Joel McPherson, and was argued by counsel.

Upon consideration of all of which it is adjudged, ordered, and decreed, that this cause be referred to Henry M. Matthews, to take, state, and report, the following accounts:

1st. All the liens that exist upon the real estate mentioned and described in the bill as belonging to the defendants, The White Sulphur Springs Company, whether the same were created by mortgage, deed of trust, judgment, or otherwise.

2d. The amount of the said several liens and their respective priorities.

3d. Such other and further matter, as any party to this said suit may require, or the commissioner may deem pertinent.

35 And it appearing from the papers in this cause that the White Sulphur Springs Company had leased the real and personal estate, mentioned and described in the bill, to George L. and William H. Peyton for a series of years, and that they had provided in the contract for the payment of the taxes that should be assessed upon the property, and a large annual rent which, by the lease, is provided to be paid over to the oldest lienholders in extinguishment of the interest that shall accrue thereon; and the said lease having been made prior to the institution of this suit, and the application of the rents as provided for in the lease being for the benefit of all the lienholders, the court is of opinion not to disturb said lease, but to allow the same to exist and remain until the coming in of the report hereby directed. But the court is of opinion that it would be inexpedient to allow said rents, as provided for in

the said lease, to go into the hands of, or to be distributed by, any person or parties residing outside of this judicial district, but that the same should remain within the control of the court.

It is therefore adjudged, ordered, and decreed that Henry M. Matthews, who is hereby appointed a special commissioner for that purpose, do, in the room and stead of R. H. Maury, collect from the said George L. Peyton and W. H. Peyton any sums which may now be due, or which may hereafter fall due, to the White Sulphur Springs Company on account of rents of the said real estate, and that he apply the sums coming into his hands as such commissioner in the same manner and to the same persons, and to the same purposes as the said Maury, was directed to apply said money by the terms of the lease from the White Sulphur Springs Company to said Peyton.

But before the said Matthews shall make the collections aforesaid he shall give bond, with approved security, before the clerk of this court, conditioned for the faithful discharge of his duties of his said office of commissioner in the penalty of $25,000, and that
36 said Matthews report his proceedings to this court.

And the said Matthews is hereby directed to give notice of the time and place of the taking of the account in this decree, directed by publication of said notice once a week for four successive weeks in some newspaper published in Lewisburg and Richmond, Virginia, and such publication shall be deemed equivalent to personal service of such notice on the parties to this suit.

At a District Court of the United States for the District of West Virginia, held at Charleston, on the 24th day of April, 1872.

C. S. Gay and others.
vs.
The White Sulphur Springs Co. and others. } In Chancery.

This cause came on again to be heard on this 24th day of April, 1872, upon the paper heretofore read therein, and upon the answer of Joel McPherson and the exhibits filed therewith at the September term, 1871, of this court, and upon the general replication to said answer, and was argued by counsel. Upon consideration whereof, the court, not now deciding any of the other questions involved in the case, except the claim asserted by the def't, Joel McPherson, to a part of the land and premises involved in this litigation, is of opinion, and doth decide that the said Joel McPherson has shown himself to be invested by good and valid title, with the separate and individual interests formerly held and owned by Mrs. Frances Bedford and her husband William Bedford, Elizabeth Copeland and her husband John Copeland, in the tract of 950 acres, the original White Sulphur Springs tract, except in the tract of 200 acres laid off by the heirs of Michael Bowyer as a common and joint property. The court is also of opinion, and doth decide,
37 that by the several contracts and agreement entered into be-

tween the White Sulphur Springs Company and the said Frances Bedford and Elizabeth Copeland and William B. Caldwell, who were then owners of the entire property, (which several contracts are filed as exhibits in this case,) it was agreed that the said White Sulphur Springs Company should assume and pay all the debts and liabilities upon said property, and that said contracts were accepted and agreed to by the creditors of said property.

The court is further of opinion, and doth decide that under the terms and by the provisions of said contracts, the separate and individual interests of the said Frances Bedford and Elizabeth Copeland (except in the 200 acres common property) were released and discharged from all the liens and liabilities of the creditors, except from the lien which was created by the deed of trust of the 3d of March, 1836, made to secure a debt to Richard Singleton and others, which lien was expressly retained as it was originally given.

The court is also of opinion, and doth decide, that the said deed of trust of 3d of March, 1836, is the first subsisting lien on the 200 acres common property, and is entitled to a priority of payment out of the proceeds of any payment thereof; and that resort should not be had to enforce the lien of said deed of trust, or any of the other separate interests in the 950 acres tract, until the proceeds of the said 200 acres, common property, shall be exhausted.

At a District Court of the United States for the District of West Virginia, held at Charleston, on the 28th day of April, 1870.

C. S. Gay and others
ag't
White Sulphur Springs Company and others. } In Chancery.

The court, without at this time further considering the report of Commissioner H. M. Matthews, showing the liens of the
38 several creditors in this case, doth recommit the same to said commissioner, with instructions, after giving four weeks' notice of the time and place of taking said account, for four weeks, successively, in some newspaper published in the county of Greenbrier, to ascertain and report to the court at its next term—

1st. Whether any, and how much, if any, of the real estate of Frances Bedford, dec'd, near the White Sulphur Springs, in Greenbrier county, is liable for the payment of any of the trust deeds, in the bill and proceedings mentioned, and to which and to what extent the same is so liable.

2d. Whether at any time, and at what time, during the late war, any portion of the personal property, embraced in the said trust deeds, or any of them, was sold by the White Sulphur Springs Company for Confederate money; and by whom and what authority, and for what amount it was so sold, and what application was made of such Confederate proceeds, and what is the present value of such proceeds, in good money, in the ratio of such money to Confederate

money, as of the time of such sale or sales; and also what portion, if any, of the personal fund, embraced in the said deeds, or any of them, is still unsold.

3d. That he ascertain and report the various debts, other than the trust debts, which are due from the White Sulphur Springs Company to outstanding creditors, together with any other matter, specially stated, deemed pertinent by himself or required by any party to be so stated.

In taking the said accounts, the commissioner is authorized, if he deems it necessary, to employ a surveyor.

And thereupon special commissioner H. M. Matthews filed his report, showing what funds had been collected by him from George L. and William H. Peyton on account of the rents of the lands
39 in the bill mentioned, together with his disbursements of the same, and the vouchers sustaining said disbursements; all of which being seen and examined by the court, it is adjudged, ordered, and decreed that the said report be approved and confirmed, and the said commissioner be directed to pay out of the first installment of the rents of the White Sulphur Springs property, for the current year, the taxed costs of this suit.

Exhibit No. 1. Filed with the Original Bill.

The following is a copy of an exhibit filed with the original bill:

This indenture, made this 3d day of March, in the year eighteen hundred and thirty-six, between Jame Caldwell and Polly, his wife, Frances Bedford, and Elizabeth Copeland, of the county of Greenbrier, of the first part, Andrew Stevenson, of the city of Richmond, John T. Brown, of the town of Petersburg, Fleming B. Miler, of the county of Bottetourt, and James McFarland, Jr., of the town of Petersburg, of the second part, and Richard Singleton, of the State of South Carolina, John Tabb, of the borough of Norfolk, in Virginia, John V. Wilcox, of Petersburg, James McFarland, of the county of Lunenburg, and such others as shall become subscribers to the loan hereinafter mentioned, of the third part, witnesseth:

That whereas the said James Calwell and Polly, his wife, Frances Bedford, and Elizabeth Copeland, the proprietors of the White Sulphur Springs, in the aforesaid county of Greenbrier, in Virginia, and of the lands held therewith, are desirous of negotiating a loan of one hundred thousand dollars, payable at the expiration of five years, and bearing an interest of six per centum per annum, payable semi-annually at the Bank of Virginia, in Richmond, upon the security of the real estate aforesaid, of which loan the aforesaid Richard Singleton hath subscribed thirty thousand dollars, the said John Tabb hath subscribed fifteen thousand dollars, and the said John V. Wilcox hath subscribed fifteen thousand dollars, and the said James McFarland hath subscribed ten thousand dollars, for which they have severally received certificates of debt due to them from the proprietors aforesaid at the expiration of five years, bearing semi-

40 annual interest, negotiable and payable at the Bank of Virginia, and signed by their duly authorized agent, Wm. B. Calwell, son of the said James and Polly; and in order to raise the sum of thirty thousand dollars, the residue of the said loan of one hundred thousand dollars, the said proprietors, by their lawful agent aforesaid, have executed six similar certificates of debt, each for the sum of five thousand dollars, bearing blank the name of the creditor and the date from which interest shall commence, and shall have deposited them in the aforesaid Bank of Virginia, with full authority to the cashier for the time being of the said bank to insert the name of the creditor and the date from which interest shall commence, and whenever the sum specified in any such certificate of debt shall have been deposited in the said bank to the credit of the aforesaid agent of the proprietors, to deliver such certificate to the lender; and whereas it is the desire of the said proprietors to issue the punctual payment of the several loans made and to be made aforesaid, and the punctual payment of the semi-annual interest thereon—

Therefore, in consideration of the premises, and in further consideration of the sum of one dollar in hand paid by the said Andrew Stevenson, John F. Brown, Fleming B. Miller, and James McFarland, Jr., the said James Calwell and Polly, his wife, Frances Bedford, and Elizabeth Copeland, they, the said James Calwell and Polly, his wife, Frances Bedford, and Elizabeth Copeland, hath given, granted, bargained and sold, aliened and enfeoffed, released and confirmed, and by these presents do give, grant, bargain and sell, alien and enfeoff, release and confirm unto the said Andrew Stevenson, John T. Brown, Fleming B. Miller, and James McFarland, Jr., all that tract or parcel of land lying and being in the county of Greenbrier, in Virginia, wherein the White Sulphur Springs are situated, being the same tract or parcel of land which was granted by the Commonwealth of Virginia to Michael Bowyer, by patent bearing date the 21st day of February, 1784, containing, by estimation, nine hundred and fifty acres, be the same, more or less.

41 To have and to hold the aforesaid tract or parcel of land, with all the waters, mines, and minerals, buildings, and other improvements thereon, and with all and singular its rights, privileges, and appurtenances, to them, the said Andrew Stevenson, John T. Brown, Fleming B. Miller, and James McFarland, Jr., the survivors or survivor of them, their heirs and assigns, forever; and the said James Calwell and Polly, his wife, Frances Bedford and Elizabeth Copeland, for themselves, their heirs, executors, administrators, do covenant and agree with the said Andrew Stevenson, John T. Brown, Fleming B. Miller, and James McFarland, Jun'r, the survivors and survivor of them, their heirs and assigns, that they, the said James Calwell and Polly, his wife, Frances Bedford and Elizabeth Copeland, their heirs, executors, and administrators, will forever defend and maintain the land aforesaid with its appurtenances, free, quiet, and exempt from all liens and incumbrances, and will forever warrant and defend the said land to the

said Andrew Stevenson, John T. Brown, Fleming Bowyer Miller, and James McFarland, Jr., the survivors or survivor of them, their heirs and assigns, forever, against all claims whatsoever.

Upon trust, nevertheless, that until default shall be made in the payment of the several sums of money lent, and to be lent as aforesaid, or of any part thereof, or of the interest, or some part of the interest that shall accrue thereon, the said James Calwell and Polly, his wife, Frances Bedford and Elizabeth Copeland shall be permitted fully to enjoy the use and profits of the said land and its appurtenances in the several proportions in which they are entitled to the same, without let or hindrance from the said parties of the second part, their heirs and assigns, and that whenever the moneys lent and to be lent as aforesaid, together with the interest that shall accrue thereon, shall be fully paid and satisfied without a sale of the land aforesaid or any part thereof, then this indenture shall be void and of none effect; and the said parties of the second part, the survivors and survivor of them, or the heirs of the survivors shall execute such release or reconveyance as counsel learned in the law shall advise; and upon the further trust that if the
42 principal sum of mony lent or to be lent as aforesaid, or any part thereof, or the semi-annual instalments of interest thereon, or any part thereof, shall be at any time in arrear and due for the space of ten days after the time appointed for the payment thereof, then the trustees aforesaid, or either of them, or the heirs of the survivors of them, at the request of the creditors aforesaid, or either of them, their, or either of their executors, administrators, or assigns, shall proceed to sell at public auction for cash upon the premises the aforesaid tract or parcel of land, with its appurtenances, or so much thereof as may be necessary to defray the costs and charges of the sale, and to satisfy and pay the whole amount of moneys lent and to be lent as aforesaid then unpaid, with all interest thereon, and out of the proceeds of the sale, after paying the costs and charges thereof, they shall pay to the several creditors aforesaid, their executors, administrators, or assigns, the principal sums with interest respectively owing to them in ratable proportions thereof if the proceeds should not suffice to pay the whole, and the surplus, if any, they pay to the aforesaid proprietors, their heirs, executors, or administrators, in the proportions in which they shall be severally entitled thereto, provided, however, that no such sale shall take place, unless the time, place, and terms of sale be previously advertised for four months in some newspaper published as convenient as may be to the place of sale, and in some newspaper published in the city of Richmond, the city of Washington, Charleston, in South Carolina, and the city of New York.

And the said James Calwell, Frances Bedford, Elizabeth Copeland, for themselves, their heirs, executors, and administrators, do hereby covenant and agree with the aforesaid Richard Singleton, John Tabb, John V. Wilcox, James McFarland, and the other parties of the third part, who shall subscribe to the loan aforesaid re-

spectively, and with their respective executors, administrators, or assigns, that they, the said James Calwell, Frances Bedford, and Elizabeth Copeland, their heirs, executors, and administrators, will well and truly pay to each of the creditors aforesaid, their
43 executors, administrators, and assigns, respectively, the several sums of money lent and to be lent as aforesaid when they shall severally fall due, with the semi-annual interest thereupon, according to the tenor and effect of the several certificates of debt aforesaid; and the said Andrew Stevenson, John T. Brown, Fleming Bowyer Miller, and James McFarland, Jun'r, for themselves, their heirs, executors, and administrators, do severally covenant and agree with the parties aforesaid of the first part and third parts respectively, that they will well and truly perform the several trusts herein declared, and especially they will pay over to the parties entitled thereto all moneys which they shall severally receive in virtue of this indenture.

In testimony, the parties aforesaid have hereunto set their hands and affixed their seals, the day and year first above written:

JAMES CALWELL. [SEAL.]
POLLY CALWELL. [SEAL.]
ELIZABETH COPELAND. [SEAL.]
FRANCES BEDFORD. [SEAL.]
A. STEVENSON. [SEAL.]
J. T. BROWN. [SEAL.]
F. B. MILLER. [SEAE.]
JAMES McFARLAND. [SEAL.]

Signed, sealed, and delivered in the presence of—
JAMES H. CALWELL,
HENRY ERSKINE,
WILLIAM CARY.

GREENBRIER COUNTY, *Sc.:*

We, Henry Erskine and William Cary, justices of the peace in the county aforesaid, in the State of Virginia, do hereby certify that Polly Calwell, the wife of James Calwell, parties to a certain deed bearing date on the third day of March, —, and hereunto annexed, personally appeared before us in our county aforesaid, and being examined by us privily and apart from her husband, and having the deed aforesaid fully explained to her, she, the said
44 Polly Calwell, acknowledged the same to be her act and deed, and declared that she had willingly signed, sealed and delivered the same, and that she wished not to retract it.

Given under our hands and seals, this third day of March, 1836.

HENRY ERSKINE. [SEAL.]
WILLIAM CARY. [SEAL.]

VIRGINIA,
Greenbrier County, Clerk's Office, } *To wit:*

I, John Matthews, clerk of the court of the county aforesaid, do

hereby certify that Henry Erskine and William Cary, the persons before whom Mrs. Polly Calwell made the above acknowldgment and relinquishment of dower, was at that time, and still are, acting justices of the peace in and for said county, duly commissioned and qualified as such, and that the signatures purporting to be theirs are genuine. And I do further certify that James H. Calwell, Henry Erskine, and William Cary, subscribing witnesses to this instrument of writing, proved before me in my office, that Mrs. Elizabeth Copeland and Frances Bedford, parties to the same, did execute and acknowledge the same to be their act and deed in their presence.

In testimony whereof, I have hereunto subscribed my name and affixed the seal of my office, this 4th day of March, 1836, and in the 60th year of the Commonwealth.

[SEAL.] JOHN MATTHEWS, *C. G. C.*

VIRGINIA,
Corporation of the City of Richmond, } *To wit:*

We, Joseph Tate, mayor, and Edmund Bailey, alderman, and justices of the peace in and for said corporation, in the Commonwealth of Virginia, do hereby certify that James Calwell,
45 Andrew Stevenson, John T. Brown, and Fleming B. Miller, parties to a certain deed bearing date on the third day of March, 1836, and hereto annexed, personally appeared before us in our corporation aforesaid, and acknowledged the same to be their act and deed, and desired us to certify their said acknowledgment to the clerk of the county court of Greenbrier county, in said Commonwealth, in order that said deed may be recorded.

Given under our hands and seals, in said city, this 14th day of March, 1836.

JOSEPH TATE. [SEAL.]
EDMUND BAILEY. [SEAL.]

VIRGINIA,
Corporation of the Town of Petersburg, } *To wit:*

We, Patrick Durkin and Robert Wilkins, aldermen and justices of the peace, in and for the town of Petersburg, in the Commonwealth of Virginia, do hereby certify that James McFarland, Jun'r, parties to a certain deed bearing date on the 3d day of March, 1836, and hereto annexed, personally appeared before us, in our corporation aforesaid, and acknowledged the same to be his act and deed, and desired us to certify the said acknowledgment to the clerk of the county court of Greenbrier county, in order that the said deed may be recorded.

Given under our hands and seals, in said town, this 18th day of March, 1836.

PATRICK DURKIN. [SEAL.]
ROBERT WILKINS. [SEAL.]

GREENBRIER COUNTY, CLERK'S OFFICE, *April* 16*th*, 1836.

This deed in trust was presented in the office with authenticated certificates endorsed thereon, certifying the due acknowledgment thereof, &c., and the same is accordingly admitted to record.

Teste: JOHN MATTHEWS, *C. G. C.*

46 A copy. Teste: MARK L. SPOTTS, *C. G C.*

Decree. March 11*th*, 1874.

UNITED STATES OF AMERICA, *Judicial District of Virginia:*

In chambers at ———, in the town of ———, West Virginia, the — day of ——, 1874.

In the District Court of the United States for the District of West Virginia.

CHARLES S. GAY and others
vs.
THE WHITE SULPHUR SPRINGS CO. and others. } In Chancery.

Upon motion of the plaintiffs it is ordered that the report made in this cause, by Commissioner H. M. Matthews, under the decree entered therein on the 25th day of April, 1868, be recommitted to said commissioner, with instructions to retake, state, and report an account of all the liens that exist upon the real estate mentioned and described in the bill as belonging to the White Sulphur Springs Company, showing distinctly their amounts, dates, dignities, and priorities; and in stating said account, said commissioner is directed to classify the liens and to set forth clearly all the debts in each class, their respective amounts, and, as far as it can be ascertained, the present owner of each, and the number of the coupon bond secured by deed of October 15, 1857, by which it is now evidenced; and the said commissioner is further directed to report any other matters deemed material by himself, or which any party to this suit may require.

But before taking said accounts the said commissioner shall give notice of the time and place of taking the same, by an advertisement for four consecutive weeks, in some newspaper published in the town of Lewisburg, which shall be equivalent to personal notice to all the parties interested.

Endorsed: "Enter. J. J. Jackson, Jr." "Entered March 11, 1874." Teste: Jasper Y. Moore, clerk."

47 *Decree. May* 7*th*, 1874.

At a District Court of the United States for the District of West Virginia, held at Charleston, on the 7th day of May, 1874.

C. S. GAY and others
vs.
THE WHITE SULPHUR SPRINGS CO. and others. } In Chancery.

It being suggested to the court that since the institution of this

suit C. S. Gay, one of the plaintiffs, and Mary P. Callison, Paul McNiel, James Jarrett, Samuel McClung, John N. Copeland, and Elizabeth Copeland, defendants, have departed this life, it is ordered that said suit abate as to the said plaintiff, C. S. Gay, and that the same, by consent, be revived against James Knight, adm'r of Mary P. Callison, George McNiel, and Rachel McNiel, personal representatives of Paul McNeil, Alexander F. Matthews and Joseph Garret, *adm'r* of James Jarrett, Henry M. Matthews and S. K. McClung, adm'rs of Samuel McClung, Joel McPherson, executor of John N. Copeland, and adm'r of Elizabeth Copeland.

And it being also suggested that Robert Dickson, one of the defendants, has become insane, and his estate has been committed to H. F. Dickson and Ro. R. Dickson, committee, it is by like consent ordered that the said suit be revived against said committee.

And Wm. B. Caldwell, Patrick Cullen, Ella Caldwell, Lewis M. Caldwell, Alexander F. Matthews, and Ella Caldwell, trustee of Columbia Calwell, this day filed their petition, asking to be made parties defendant in this suit, which is accordingly done, and upon their motion the said petition is accepted and received as their joint answer, to which the plaintiff replied generally.

48 And Henry M. Matthews this day filed his petition, from which it appears that the defendant, F. B. Miller, trustee, &c., has been removed, and the said Matthews substituted as trustee in his stead, it is ordered that this suit be dismissed as to the said Miller; that the said Henry M. Matthews, trustee, &c., be made a party defendant, and that his said petition be received and filed as his answer, to which the plaintiff replies generally, and thereupon this cause is continued until the next term.

The following are copies of exhibits filed with the original bill:

49 *Exhibit No. 2. Filed with Original Bill.*

DEED A.

This indenture, made this 3d day of November, in the year of our Lord one thousand eight hundred and forty-one, between James Calwell and Polly, his wife, William B. Calwell, Frances Bedford, and Elizabeth Copeland, of the first part, and Mason Matthews and Gustavus A. Crockett, of the second part, and Henry Erskine, of the third part, witnesseth: That the said James Calwell, William B. Calwell, Frances Bedford, and Elizabeth Copeland are justly indebted to the said Henry Erskine in the sum of thirty-four thousand two hundred and ninety-seven dollars, bearing interest until paid, due by bond executed this day; and also the further sum of three thousand one hundred and fifty dollars, due by bond of William B. Calwell, which bonds are due on the 3d day of November, 1842, and which will more fully appear by reference to said bonds. And the said James Calwell, William B. Calwell, Frances Bedford, and Elizabeth Copeland are willing and desirous to secure the said bond and debt to the said Erskine.

Now this indenture witnesseth, that for and in condsieration of the premises, and also for the further consideration of five dollars to the said James Calwell and Polly, his wife, William B. Calwell, Frances Bedford, and Elizabeth Copeland, parties of the first part, in hand paid by the said Mason Matthews and Gustavus A. Crockett, at or before the ensealing and delivery of these presents, the receipt whereof is hereby acknowledged, they, the said parties of the first part, have given, granted, bargained, sold, aliened, enfeoffed, released, and confirmed, and by these presents do give, grant, bargain, sell, alien, enfeoff, release, and confirm, to the said Mason Matthews and G. A. Crockett, their heirs and assigns, forever, the following tracts or parcels of land, to wit: 1st, all that tract or parcel of land known as the White Sulphur Springs tract, lying and being on the waters of Howard creek, in said county, containing upwards of 900 acres, being the same land formerly the property of Michael Bowyer, deceased, descended to his heirs-at-law, and now the property of the aforesaid parties of the first part, embracing the White Sulphur Springs and all the appurtenances belonging thereto. A reference to the deeds and papers of record in the clerk's office of said county will more fully show the quantity and boundaries and the interest of each of the parties therein.

Second. One other tract or parcel of land adjoining the above, which is known as the Brown tract, containing 1,000 acres, which was deeded from Samuel Brown and others to James Calwell, and which deed is of record in the clerk's office aforesaid—a reference to the same will more fully show—and other small tracts and surveys adjoining the above-described tract. One other tract of 5,000 acres, deeded to William B. Calwell, which was purchased of Hector and Guy D. French, which deed is of record in the clerk's office aforesaid, and will more fully show. One other tract of over 800 acres, purchased by Wm. B. Calwell of Richard Dickson, lying on the north branch of Howard creek, adjoining the lands of James Wylie, D. Surber, John Handly, and others—a reference to the deed from said Dickson to said Wm. B. Calwell will more fully show—and moreover, to embrace all the lands that belongs to either of the above-named James Calwell, Wm. Calwell, Frances Bedford, and Elizabeth Copeland, either their joint or separate interest in the aforesaid tracts or parcels of land, either jointly or separately, that the said James Calwell and Polly, his wife, Wm. B. Calwell, Francis Bedford, and Elizabeth Copeland have in the White Sulphur Springs tract of land, and all the interest, right, and title that they, or either of them, have in the other herein mentioned and described tracts of land and the other tracts adjoining the White Sulphur Springs tract, that have accrued or come to them, either by descent, devise, purchase, or otherwise, in and to the White Sulphur Springs tract or any of the tracts of land owned or claimed by either of the contracting parties of the first part, either jointly or severally; and it is understood that each of the parties

of the first part convey their joint and separate interest in
51 the aforesaid recited tracts of land, with all the buildings and appurtenances thereto belonging. Also the following slaves and other personal property of the said James Calwell, hereinafter designated, viz.:

One negro man, named John, (a wagoner); also, one named Davis, (a blacksmith); also, one named Robert, (a house boy); also, one named Charles, (a cook), and his wife, named Kitty; also, a mulatto boy, named Charles, about 15 or 16 years of age; one negro man, named George Cook, and one named George Harris, the said George Harris having a term of years to serve; also, one named Powhattan, (blacksmith); also, one negro boy, named Horace, about 12 years of age; also, one named Randolph, about 11 or 12 years of age; one other, named Com. or Commodore, (deaf); one negro woman, named Mary; also, one named Charlotte, and two children, a girl and a boy; one woman, named Ellen, and her child; also, one negro girl, named Mary, about 15 years old; also, one girl, named Adaline, about 12 years old; also, 600 mattresses, 200 feather beds, 1,200 blankets, 1,000 pair of sheets, 1,000 pillow cases, 1,000 bed spreads and counterpanes, 600 bedsteads, single and double, 200 table cloths, 2,000 Windsor chairs, 500 small tables, 500 looking-glasses; also, 20 horses and mules, 3 wagons, 2 carts, 20 steers, 50 cows, 3 full-blood Durham cows, one full-blood Durham bull, one full-blooded Bakewell ram, 2 ewes, one Timoleon stud horse, 200 sheep, 150 hogs, with all and singularly the appurtenances to the said tracts or parcels of land belonging or in anywise appertaining; that the said James Calwell and Polly, his wife, Wm. B. Calwell, Frances Bedford, and Elizabeth Copeland have title to of the above-described tracts of land, either in law or equity, separately or jointly; and, also, all the slaves and other personal property, and the future increase of the females of the said slaves, and the increase of the live stock, and all the estate, right, title, and interest of the said James Calwell and Polly, his wife, Wm. B. Calwell, Frances Bedford, and Elizabeth Copeland in and to the said granted, or intended to be granted, tracts or parcels of land and premises.

To have and to hold the said hereby granted, or intended
52 to be granted, tracts or parcels of land and premises, with their appurtenances belonging to each of the parties of the first, either jointly or severally, together with the aforesaid slaves, and the future increase of the female slaves thereof, and all the personal property hereby conveyed, belonging to the said James Calwell, unto the said Mason Matthews and G. A. Crockett, their heirs, executors, adm'rs, and assigns, forever.

To the only proper use and behoof of the said Matthews and Crockett, their heirs, ex'ors, adm'rs, and assigns, forever. And the said James Calwell and Polly, his wife, William B. Calwell, Frances Bedford, and Elizabeth Copeland, for themselves, their heirs, ex'ors, and adm'rs, do hereby covenant, promise, and agree to and with the said Mason Matthews and G. A. Crockett, their heirs, ex'ors,

adm'rs, and assigns, forever, in manner and form following, that is to say: That the said James Calwell and Polly, his wife, Wm. B. Calwell, Frances Bedford, and Elizabeth Copeland, their heirs, ex'ors, adm'rs, the aforesaid tracts or parcels of land and premises, with their appurtenances belonging, either in whole or in part, jointly or severally, *belonging* to the parties of the first part, together with the aforesaid slaves and future increase of the females, and all the other personal property herein conveyed, belonging to the said James Calwell, unto the said Mason Matthews and G. A. Crockett, their heirs, ex'ors, adm'rs, and assigns, against them and their heirs, and against all persons *whatsoever*, shall and will warrant and forever defend by these presents.

Upon trust, nevertheless, that the said Mason Matthews and Gustavus A. Crockett, their heirs, ex'ors, and adm'rs, shall permit the said parties of the first part to remain in quiet and peaceable possession of the said tracts or parcels of land and premises, with their appurtenances; and the said James Calwell, in possession of the aforesaid slaves and other personal property hereby conveyed, and to take the profits thereof to their own use until default be made in the said sum of $34,297.00, or until a requirement of the closing of this trust by said Erskine. And upon this further trust,
53 that they, the said Mason Matthews and G. A. Crockett, or either of them, or the survivor of either of them, or either of their ex'ors, or adm'rs, shall and will, so soon after the happening of such default of payment, that is, on the 3d day of November, 1842, or as soon thereafter as the said Henry Erskine, his ex'ors, adm'rs, or assigns, shall require, or the parties of the first part shall request, sell, first, the slaves and personal property of the said James, then the said tracts of land and premises, with the appurtenances, as above described, or such part of the hereby granted premises as the said trustee or trustees, or their representatives hereby authorized to act, shall think sufficient for the purpose, and shall think proper to sell, to be sold to the highest bidder for ready money at public auction, after having fixed the time and place of sale, and given four months notice in some newspaper published in the city of Richmond, Washington, New York, and Philadelphia, of the time and place of the sale of the laws and appurtenances, and the aforesaid slaves and other personal property, and out of the moneys arising from such sale shall, after paying the charges thereof, and all the expenses attending the premises, pay over to the said Henry Erskine, his ex'ors, adm'rs, or assigns, the said sum of $34.297.00, with interest thereon, from this day until this trust is fully discharged; and the further sum of $3,150.00, with the interest thereon, until this trust is fully discharged; and the balance, if any, shall pay over to the said parties of the first part, as would be of right due them, or their heirs, ex'ors, or assigns.

But if the whole of said sum of money shall be fully paid off and discharged to the said Henry Erskine, his ex'ors, adm'rs, or assigns, on or before the 3d day of November, 1842, when the same is made

payable by this indenture, so that no default of payment of the said sum of money be made, then this indenture to be void, or else to remain in full force and virtue.

In witness whereof, the said parties have hereunto set their hands and seals, the day and year above-written.

54 JAMES CALWELL. [SEAL.]
POLLY CALWELL. [SEAL.]
WM. B. CALWELL. [SEAL.]
FRANCES BEDFORD. [SEAL.]
ELIZABETH COPELAND. [SEAL.]
HENRY ERSKINE. [SEAL.]

All interlineations and alterations were made prior to the execution of the above deed.

GREENBRIER COUNTY, *to wit:*

We, James Frazer and Wm. Cary, justices of the [peace] in the county aforesaid, in the State of Virginia, do hereby certify that James Calwell, Wm. B. Calwell, Frances Bedford, and Elizabeth Copeland, parties to a certain deed bearing date on the 3d day of November, 1841, and hereto annexed, personally appeared before us in our county aforesaid, and acknowledged the same (it being the within deed from them to Erskine) to be their act and deed, and desired us to certify the said acknowledgment to the clerk of the county court of Greenbrier [county], in order that the said deed may be recorded.

Given under our hands and seals, this 4th day of November, 1841.

JAMES FRAZER. [SEAL.]
WILLIAM CARY. [SEAL.]

GREENBRIER COUNTY, *to wit:*

We, James Frazer and William Cary, justices of the peace in the county aforesaid, do hereby certify that Polly Caldwell, the wife of James Calwell, parties to a certain deed bearing date on the 3d day of November, 1841, (it being the within deed to Henry Erskine,) personally appeared before us in our county aforesaid, and being examined by us privily and apart from her husband, and having the deed aforesaid fully explained to her, acknowledged the same to be her act and deed, conveying all her right in said deed, and
55 declared that she had willingly signed, sealed and delivered the same, and that she wished not to retract it.

Given under our hands and seals, this 4th day of November, 1841.

JAMES FRAZER. [SEAL.]
WILLIAM CARY. [SEAL.]

GREENBRIER COUNTY,
CLERK'S OFFICE, *November* 4, 1841.

This deed in trust was presented in this office, with authenticated certificates endorsed thereon, certifying as well the due acknowledgment thereof by James Calwell, Wm. B. Calwell, Frances Bed-

ford, and Elizabeth Copeland, as of the relinquishment of dower therein by Polly Calwell, the wife of the said James Calwell, and also the due acknowledgment thereof by Henry Erskine, and the same is accordingly admitted to record at 30 minutes after 3 o'clock p. m.

Teste: JOHN MATTHEWS, *C. G. C.*

A copy from the record.

Teste: M. L. SPOTTS, *Clk.*

Copy of Exhibit No. 3. Filed with Original Bill.

This indenture, made and entered into this 10th day of October, 1842, between James Calwell, William B. Calwell, Frances Bedford, Elizabeth Copeland, James H. Calwell, Lewis M. Calwell Edmond S. Calwell, John B. Calwell, Henry B. Calwell, and Bedford Calwell, of the White Sulphur Springs, in the county of Greenbrier, and State of Virginia, of the one part, and William Cary and Joel McPherson of the second part—

Witnesseth, that whereas the said James Calwell and William B. Calwell, being indebted in divers sums of money to divers individuals and companies, that is to say, to Matthews, Paxton & Co., Hamilton & Nickell, James M. Nickell, James Nickell, Sen'r, Isaac Nickell, Andrew Nickell, Willis Mann, James Dorsey, W. Paxton, Jr., Jas. Jarrett, Stuart McClung, J. H. Boswell, John H.
56 Harper, Randolph Stalnaker, David Tuckwiler, Jesse Livesay, Robert Dickson, Jno. Surbough, Wm. McClung, Richard James, Elisha Callison, Steele & McDaniel, Paul McNiel James Frazer, VanLew & Smith, VanLew, Smith & Co., James Evans, Wm. Booth, Alex'r Duvall & Co., H. W. & J. J. Fry, Oliver F. Winchester, Richard Crouch, trustee, Joseph Allen, Wadsworth, Turner & Co., H. H. Watson, Jac. Heald & Co., Derby & Franhain, Wm. McCreary, Edwin H. Farnsworth, Henry Mann, James Long, and H'y Hoover, which several debts, so due and owing by the said James Calwell and Wm. B. Calwell to the above-named creditors, will be more fully seen by reference to a thereof, hereto annexed and made a part of this indenture, and which the said James Calwell & Wm. B. Calwell are anxiously desirous of securing and fully paying.

Now this indenture further witnesseth, that the said parties of the first part, for and in consideration of the premises, and for the further consideration of the sum of ten dollars to them, the parties of the first part, in hand by the said Wm. Cary and Joel McPherson, at or before the sealing and delivery of these presents, the receipt whereof they do hereby acknowledge, have bargained, sold, given, granted, aliened, enfeoffed, and conveyed, and by these presents do bargain, sell, give, grant, alien, enfeoff, and convey unto the said Wm. Cary and Joel McPherson, their heirs and assigns, all that tract of land known as the White Sulphur Springs tract, lying and being on the waters of Howard's creek, in the said county of Green-

brier, containing upwards of 900 acres, be the same more or less, being the same property formerly belonging to Michael Bowyer, dec'd, which descended to his heirs-at-law, and now the property of the parties of the first part, embracing the White Sulphur Springs and the property appurtenant and belonging thereto; a reference to the deeds and title papers thereof, of record in the clerk's office of the county of Greenbrier, will more fully and at large appear, showing the quantity and boundaries, and the interest of the parties therein;

also one other tract or parcel of land adjoining the White
57 Sulphur Springs tract, known as the Brown tract, containing 1,000 acres, which was deeded from Samuel Brown and others to James Calwell, and recorded in the clerk's office of the county court of Greenbrier, to which reference is also had for greater certainty as a part of this indenture.

Also other small tracts or parcels of land and surveys adjoining the above-described tracts. The deeds and title papers of which are also of record in the clerk's office of Greenbrier county, to which reference is made.

Also one other tract or parcel of land containing 5,000 acres, be the same more or less, deeded to Wm. B. Caldwell from Hector and Guy D. French, and recorded in the same office; also one other tract or parcel of land, containing upwards of 800 acres, purchased by Wm. B. Calwell, of Richard Dickson, lying on the north branch of Howard's Creek, adjoining the lands of James Wylie, David Surber, John Handly, and others, the deed for which is of record in the clerk's office of the county court of said county, to which reference is also had as a part of this indenture and to embrace all the lands and real estate belonging to the said James Calwell, Wm. B. Calwell, Frances Bedford, Elizabeth Copeland, Jno. B. Calwell, Henry B. Calwell, James H. Calwell, Lewis M. Calwell, Edmond S. Calwell, and Bedford Calwell, either their joint and separate estates in the aforesaid tracts of land, that they jointly and separately share, hold, or use, entitled in the White Sulphur Springs tract, and all the interest, right, title, and estate which the said parties of the first part have jointly or separately in the other hereinmentioned and described tracts of land, and in the other tracts adjoining the said White Sulphur Springs tract of land that have descended, *anured*, or come to them, or either of them, jointly or severally, either by descent, devise, purchase, or otherwise, in and to the White Sulphur Springs tract of land, with its appurtenances and each and all of the tracts hereinbefore described, owned, or claimed by the parties of the first part, either jointly or severally,

and it is understood that each of the parties of the first part
58 do hereby convey their joint and separate estate and interests in the aforesaid recited tracts or parcels of land, with all the buildings and appurtenances thereunto belonging.

Also the following slaves, the property of said James Calwell, as herein designated, to wit: One negro man named John (a wagoner); also one negro man named Davis (a blacksmith); also a negro man

named Robert (house Bob); also one negro man named Charles and his wife, named Kitty; also a mulatto boy, named Charles, about 16 or 17 years old; one negro man named George Cook; one negro man named George Harris, a free boy, only a term of years to serve; also one negro man named Powhatan (a blacksmith and baker); also one negro boy, named Horace, about 13 years old; another named Com., or Commodore (deaf); one negro woman named Mary; also one named Charlotte, and two children, a girl and a boy; also a negro boy, named Randolph, about 12 or 13 years old; also one negro woman, named Ellen, and her child; also one negro girl, named Mary, about 16 years of age; also ———, named Adeline, about 12 years old; and the future increase of the female slaves; also 600 mattresses, 200 feather beds, 1,200 blankets, 1,000 pair sheets, pillows and pillow cases, 200 table cloths, 2,000 Windsor chairs, 1,000 bed spreads and counterpanes, 600 bedsteads, singe and double, 500 small tables, 500 looking-glasses; also 20 head of horses and mules, 3 wagons, 2 carts, 20 steers, 50 cows, 3 full-blooded Durham cows, one full-blooded Durham Bull, one full-blooded Bakewell ram and 2 ewes, one Timoleon stud horse, 200 sheep, 150 hogs, with all and singular the tracts or parcels of land, with their appurtenances thereunto belonging, or in anywise appertaining, that the parties of the first part have title to, either in law or equity, jointly or severally; also all the slaves and personal property hereinbefore recited, mentioned, and described, and the future increase of the female slaves and of the live stock; and also all the right,
59 title, interest, and estate of the said parties of the first part in and to the tracts or parcels of land and premises, and into the several slaves and other personal property hereinbefore mentioned, and their future increase as aforesaid, unto the said Wm. Cary and Joel McPherson, their heirs, ex'ors, adm'rs, and assigns, to the only proper use, benefit, and behoof of the said Wm. Cary and Joel McPherson, their heirs and assigns.

And the said parties of the first part, for themselves, their and each of their joint and several, heirs, ex'ors and adm'rs, do hereby covenant and promise to defend the right and title of said tracts and parcels of land hereinbefore described, with their appurtenances, and of the several slaves and and the increase as aforesaid, and of the other personal property herein mentioned and enumerated unto the said Wm. Cary and Joel McPherson and their heirs, against the claim or claims of the parties of the first part, jointly and severally, and against the claim or claims of all and every other person or persons whomsoever.

Upon these express trusts notwithstanding; upon the trust that the said parties of the first part shall be at liberty to hold and continue in possession of the said several tracts of land hereinbefore mentioned and described, until default in the payment of the several sums of money herein and hereby secured shall be made, with right and liberty to enjoy the same, and take the rents and profits thereof.

And the said James Calwell shall be at liberty to hold quiet and peaceable possession of the several slaves and other personal property hereinbefore mentioned and enumerated, and enjoy the use thereof, until default in the payment of the debts aforesaid shall be made.

And upon this further trust, that if the said James Calwell and William B. Calwell shall, on the 1st day of January, 1848, fail to pay the said several sums of money mentioned in the schedule hereto annexed, before referred to, due the said Matthews,
60 Paxton & Co., Hamilton & Nickell, James M. Nickell, Jas. Nickell, Sr., Isaac Nickell, And'w Nickell, Willis Mann, Jas. Dorsey, William Paxton, Jr., Jas. Jarrett, Stuart McClung, Randolph Stalnaker, David Tuckwieler and Jesse Livesay, Robert Dickson, John Surbough, Wm. McClung, J. A. Boswell, H. H. Walson, Jacob Heald & Co., John Harper, Richard James, Elisha Callison, Steele & McDaniel, Paul, McNiel, James Frazer, Ed. H. Farnsworth, Derby & Farnham, Wm. McCreery, H'y Mann, Jas. Long and Henry Hoover, with interest thereon, respectively, and shall also on the 1st day of January, 1848, fail to pay, or cause to be paid, the said several sums of money, mentioned in the schedule hereto annexed, and before referred to, respectively due and owing to the said Van Lew & Smith, Van Lew, Smith & Co., James Evans, William Booth, Alex. Duvall & Co., H. W. & J. J. Fry, Oliver F. Winchester, Richard Crouch, trustee, Joseph Allen, and Wadsworth, Turner & Co., with interest annually on each last mentioned debt, respectively, until the said 1st day of January 1848; that is to say, the said interest to be paid annually on the 15th day of August in each year, the first payment of interest on the said last mentioned debts to be made on the 15th day of August, 1843, as more fully appears by the said schedule hereto annexed.

That then the said Wm. Cary and Joel McPherson, or the survivor of them, shall, after advertising the time and place of sale in the National Intelligencer, a paper published in Washington city, Baltimore Patriot, Richmond Enquirer, New York Courier and Enquirer, United States Gazette, published in Philadelphia, Charleston Mercury, New Orleans Bee, and in some paper published in the town of Lewisburg for the period of seven weeks respectively, proceed to sell at puplic auction to the highest bidder the several tracts or parcels of *lands* hereinbefore mentioned and described, with their appurtenances, and the several
61 slaves and other personal property hereinbefore recited and enumerated, with their increase as aforesaid, upon the premises, for ready money, and out of the proceeds arising from said sale, after first paying off and discharging the costs of this indenture, and the expenses of sale, the said Wm. Cary and Joel McPherson shall pay the said several sums of money, with all interest thereon due the said Matthews, Paxton & Co., Hamilton & Nickell, Jas. M. Nickell, Jas. Nickell, Sen'r, Isaac Nickell, Andrew Nickell, Willis Mann, Jas. Dorsey, Wm. Paxton, Jr., Jas. Jarrett,

Stuart McClung, Randolph Stanlaker, David Tuckwieler and Jesse Livesay, Ro. Dickson, John Surbough, Wm. McClung, Jacob Heald & Co., Jno. Harper, Richard James, Elisha Callison, Steele & McDaniel, Paul McNeel, Jas. Frazer, Derby & Farnham, Wm. McCreery, H'y Mann, and Henry Hoover; and also the several sums of money and interest thereon due the said Van Lew & Smith, Van Lew, Smith & Co., Jas. Evans, Wm. Booth, Alex'r Duvall & Co., H. W. & J. J. Fry, Oliver F. Winchester, Richard Crouch, trustee, Jos. Allen, and Wadsworth, Turner & Co., in satisfaction of their respective debts, with interest, as aforesaid, and as are more particularly mentioned and recited in the schedule hereto annexed as a part of this indenture.

And upon this further trust, that if the said James Calwell and Wm. B. Calwell shall fail to pay the interest annually on the debts respectively due to the said Van Lew & Smith, Van Lew, Smith & Co., Jas. Evans, Wm. Booth, Alex. Duvall & Co., H. W. & J. J. Fry, Oliver F. Winchester, Rich'd Crouch, trustee, Jos. Allen, and Wadsworth, Turner & Co., on the 15th day of August in each year, commencing on the 15th day of Aug't, 1843, and shall continue so to fail for the period of 30 days, after the accruing interest on said debts respectively shall fall due, then that the said Wm. Cary and Joel McPherson, or the survivor of them, shall, advertising the time and place of sale in some newspaper, published in Richmond, and in a newspaper published in Lewisburg, proceed to sell the property hereinbefore mentioned, both real and personal, or such part thereof as may be sufficient to pay off
62 the interest that may or shall have accrued on said debts respectively, to the highest bidder, for ready money, and out of the money arising from such sale pay and discharge the expenses of sale and the interest due on said debts respectively.

And the residue of money arising from the sale or sales to be made under and by virtue of this indenture, after paying and discharging all the expenses and costs thereof, and all the debts and interest thereon, respectively, herein secured to be paid, and more particularly enumerated in the said schedule, the said Wm. Cary and Joel McPherson will pay over to the several parties of the first part, or to such of them, or other person or persons, as by the law will be entitled to receive the same.

And whereas several of the creditors of the said James Calwell and Wm. B. Calwell have not been consulted previous to the making of this indenture, and not having given their assent thereto, it is herein provided that if the said J. H. Boswell, H. H. Watson, Jacob *Held* & Co., John Harper, Richard James, Elisha Callison, Steele & McDaniel, Paul McNeel, James Frazer, Henry Hoover, Jas. Long, Derby & Farnham, Wm. McCreery, who have not been consulted, and consequently have not given their assent to this indenture, shall, within three months, fail to give their assent to this trust and the security hereby provided, in writing, filed with the clerk of the county court of Greenbrier, after they shall have been

notified of this indenture, then, on such failure, the last mentioned creditors shall have no benefit arising from this trust, nor shall they participate in the security herein, and hereby provided;

But if the said mentioned creditors, or either of them, shall within the period aforesaid express his willingness, in writing, as aforesaid, to accept the provisions and security provided by this indenture, then such assenting creditor shall stand upon an equality with all the other creditors;

63 And whereas, also, the said James and Wm. B. Calwell, in making this trust, may have omitted some of their creditors for whose debts it is their wish and desire to provide and secure—

Now this indenture further witnesseth, and this further trust is provided hereby, that this indenture is intended to embrace and make provision for all the other creditors of the said James Calwell and Wm. B. Calwell, not herein mentioned, who shall show themselves to be creditors of the said James and Wm. B. Calweell or either of them, and shall, within three months from the date hereof, give their assent to the provisions of this indenture in writing, filed with the clerk of the county court of Greenbrier. And upon such creditors showing the amount of their debts, and giving their assent to the provisions of this indenture, it shall be the duty of the within named trustees, or the survivor of them, provided such last mentioned debts are not paid with all interest thereon, on or before the 1st day of January, 1848, in making sale under this indenture to pay off said last mentioned debts, in the same manner and to the same extent as if the same had been provided for in the first part of the indenture, anything herein to the contrary notwithstanding. Provided always, that if the said James Calwell and Wm. B. Calwell, their heirs, ex'ors and adm'rs, shall well and truly pay, or cause to be paid, the several sums of money hereby intended to be secured, and more particularly mentioned in the schedule hereto annexed on the 1st day of January, 1848, with all the interest due thereon to the persons to whom the same are respectively due or shall be due and payable, then this indenture and the estate hereby created shall be null and void to all intents and purposes, anything herein contained to the contrary notwithstanding.

In witness whereof, the said James Calwell, Wm. B. Calwell, Frances Bedford, Elizabeth Copeland, John B. Calwell, Henry B. Calwell, James H. Calwell, Lewis M. Calwell, Edmond S. Calwell, and Bedford Calwell, of the first part, and Wm. Cary and Joel McPherson, of the second, have hereunto set their hands and

64 affixed seals, the day and year first written.

JAMES CALWELL. [SEAL.]
WM. B. CALWELL. [SEAL.]
FRANCES BEDFORD. [SEAL.]
ELIZABETH COPELAND. [SEAL.]
J. BOWYER CALWELL. [SEAL.]
HENRY B. CALWELL. [SEAL.]

JAMES H. CALWELL. [SEAL.]
LEWIS M. CALWELL. [SEAL.]
EDMOND S. CALWELL. [SEAL.]
BEDFORD CALWELL. [SEAL.]
WILLIAM CARY. [SEAL.]
JOEL McPHERSON. [SEAL.]

Teste:

JNO. H. COPELAND,
JOHNSON REYNOLDS,
RO. JOHNSTON.

GREENBRIER COUNTY, CLERK'S OFFICE, *Oct.* 12, 1842.

This deed was presented in the office with the schedule annexed, and proved by the oaths of John H. Copeland and Robert Johnson and Johnson Reynolds, subscribing witnesses as to James Cawell, William B. Calwell, Francis Bedford, Elizabeth Copeland, J. Bowyer Calwell, Henry B. Calwell, Lewis M. Calwell, Edmond S. Calwell, and Bedford Calwell, the vendors; and on the 15th day of October, 1842, the same was signed, sealed, and acknowledged, by James H. Caldwell, and the same is admitted to record accordingly.

Teste: JOHN MATTHEWS, *C. G. C.*

A copy from the record.

Teste: M. L. SPOTTS, *Clk.*

65 *Schedule*

Of the debts and creditors referred to in and secured by the deed of trust hereto annexed, and which is made a part thereof, owing by the aforesaid James Caldwell and William B. Caldwell, as follows:

To Van Lew & Smith, the sum of..... $2,706 45
with interest thereon from the 10th day of October, 1842, until paid, the interest to be paid annually, commencing on the 15th of August, 1843, as per bond and trust deed.

To Van Lew, Smith & Co., the sum of..... 96 84
with interest thereon from the 10th day of October, 1842, until paid, the interest to be paid annually, commencing on the 15th day of August, 1843, as per bond and trust deed.

To Joseph Allen, the sum of..... 701 73
with interest thereon from the 10th day of October, 1842, until paid, the interest to be paid annually, commencing on the 15th of August, 1843, as per bond and trust deed.

To Wadsworth, Turner & Co., the sum of..... 5,878 98
with interest thereon from the 10th day of October, 1842, until paid, the interest to be paid annually, commencing on the 15th of August, 1843, as per bond and trust deed.

To H. W. & J. J. Fry, the sum of $5,199 75
with interest thereon from the 10th day of October, 1842, until paid, the interest to be paid annually,
66 commencing on the 15th of August, 1843, as per bond and trust deed.

To William Booth, the sum of 628 91
with interest thereon from the time the same was due, until paid, as appears from face of note, the interest to be paid annually, commencing on the 15th day of August, 1843, as per bond and trust deed.

To David Tuckwiller and Jesse Levesay, the sum of ... 2,935 11
with interest thereon from the 10th day of Oct., 1842, until paid, as per bond.

To William McClung, the sum of 4,207 49
with interest thereon from the 10th day of October, 1842, until paid, as per bond.

To Edwin H. Farnsworth 211 38
with interest thereon from the 10th day of October, 1842, until paid.

To John Harper, the sum of 2,574 51
with interest thereon from the 10th day of Oct., 1842, until paid.

To Paul McNeal, the sum of 786 27
with interest thereon from the 10th day of October, 1842, until paid.

To Steele & McDaniel, the sum of 329 34
with interest thereon from the 10th day of October, 1842, until paid.

67 To James Nickell, Sen'r, the sum of 6,239 02
with interest thereon from the 10th day of October, 1842, until paid.

To Hamilton & Nickell, the sum of 2,572 50
with interest thereon from the 24th Sept., 1841, until paid, as per bond.

To James M. Nickell, the sum of 241 29
with interest thereon from the 11th Sep., 1841, until paid, as per bond.

To James Jarrett, the sum of 3,216 48
with interest thereon from the 5th October, 1841, till paid, as per bond.

To Randolph Stalnaker, the sum of 600 00
with interest thereon from the 26th day of August, 1841, till paid, as per bond.

To Wm. Paxton, Jr., the sum of 1,037 22
with interest thereon from the 6th of October, 1842, until paid, as per bond.

To Mathews, Paxton & Co., the sum of 1,298 28
with interest thereon from the 6th Oct., 1842, until paid, as per bond.

To James Evans, the sum of $528 99
with interest thereon from the 22d Sep'r, 1842, until paid, the interest to be paid annually, commencing on the 15th day of August, 1843, as per
68 note and trust deed.

To Alexander Duvall & Co., the sum of 723 67
with interest thereon from the 10th day of Oct., 1842, the interest to be paid annually, commencing on the 15th August, 1843, as per bond.

To Oliver F. Winchester, the sum of 67 75
interest from the 10th day of Oct., 1842, the interest to be paid annually, commencing on the 15th August, 1843, as per bond.

To Richard Crouch, trustee, the sum of 540 62
with interest thereon from the 10th day of October, 1842, the interest to be paid annually, commencing on the 15th Aug., 1843, as per bond.

To Robert Dickson, the sum of 1,140 09
with interest from 8th November, 1841, until paid, as per bond.

To Henry Mann, the sum of 5,663 49
with interest thereon from the 10th day of October, 1842, until paid, as per bond.

To James Dorsey, the sum of 2,475 69
with interest thereon from the —— day of ——, 18—, until paid, as per bond.

69 To Stuart McClung, the sum of .....
with interest thereon from the — day of ———, 18—, until paid, as per bond.

To Isaac Nickell, the sum of .....
with interest thereon from the — day of ———, 18—, until paid, as per bond.

To Andrew Nickell, the sum of 923 44
with interest thereon from the 10th day of October, 1842, until paid, as per bond.

To Willis Mann, the sum of .....
with interest thereon from the — day of ———, 18—, until paid, as per bond.

To J. H. Boswell, the sum of 1,417 00
with interest thereon from the 13th day of Sep'r, 1841, until paid, as per bond.

To H. H. Watson, the sum of 6,245 96
with interest thereon from the 1st day of July, 1842, until paid, as per bond.

To Jacob Heald, the sum of .....
with interest thereon from the — day ———, 18—, until paid, as per bond.

70 To Richard James, the sum of .....
with interest thereon from the — day of ———, 18—, until paid, as per bond.

To Elisha Callison, the sum of ---------- $1,174 67
with interest thereon from the 14th day of August, 1840, until paid, as per bond.
To James Frazer, the sum of---------- 635 19
with interest thereon from the 21st day of Dec'r, 1842, until paid, as per bond.
To Henry Hoover, the sum of----------
with interest thereon from the — day of ———, 18—, until paid, as per bond.
To James Long, the sum of----------
with interest thereon from the — day of ———, 18—, until paid, as per bond.
To John Surbough, the sum of----------
with interest thereon from the — day of ———, 18—, until paid, as per bond.
To Derby & Farnham, the sum of---------- 254 06
with interest thereon from the 22d day of De-
71 cember, 1842, until paid, as per bond.
To William McCreary, the sum of----------
with interest thereon from the — day of ———, 18—, until paid, as per bond.
To Charles Snead, the sum of---------- 828 88
with interest thereon from the 10th day of October, 1842, until paid, as per bond.

The object and intention of the foregoing trust deed, of which this schedule is a part, is to secure and pay the debts, with their interest accruing thereon, herein specially designated by amount, and also the debts not specified by the amounts, there being no data by which their amounts and the times when due could be ascertained. But when ascertained leave is reserved to place the amounts thereof in the foregoing schedule and the time from which interest is to commence, and that the same, when so put in this schedule opposite the names of the respective creditors, to have the same effect as if entered in this schedule before the signing, acknowledging, and delivery of this indenture.

This a part of the foregoing trust.

Given under our hands and seals, this 10th day of October, 1842.

JAMES CALDWELL. [SEAL.]
WM. B. CALDWELL. [SEAL.]

Teste:
RO. JOHNSTON.
JOHNSON REYNOLDS.
JOHN H. COPELAND.

72 GREENBRIER COUNTY, CLERK'S OFFICE, *Oct. 12th*, 1842.

This deed and schedule annexed was presented in the office, and proved by the oaths of Ro. Johnson, John H. Copeland, and

Johnson Reynolds, subscribing witnesses thereto, and the same is admitted to record accordingly.

Teste: JOHN MATTHEWS, *C. G. C.*

November 30th, 1842. Paul McNeal's consent accepting the provisions of the aforesaid deed in trust filed, &c. Jacob Heald & Co., the same by their acknowledgment, &c.

Teste: JOHN MATTHEWS, *C. G. C.*

The undersigned, trustees in a deed of trust executed by James Caldwell and Wm. B. Caldwell on the 10th of October, 1842, to secure to all their outstanding creditors the amount due each of them severally, have, in pursuance of a provision in said trust deed, placed the names and amounts due to the following creditors in the trust deed aforesaid, to wit: We have filled the blank opposite the name of Andrew Nickell with the sum of $923.46, to have interest from the 10th day of October, 1842. The blank opposite the name of J. H. Boswell with the sum of $1,417, to have interest from the 13th of September, 1841. The blank opposite the [name of] H. H. Watson with the sum of $6,245.96, to have interest from the 1st of July, 1842. The blank opposite the name of James Frazer with the sum of $635.19, to have interest from the 21st of Dec'r,
73 1842. The blank opposite the name of Derby & Farnham with the sum of $254.06, to have interest from the 22d of Dec'r, 1842. And the blank opposite the name of Charles Snead with the sum of $828.88, to have interest from the 10th day of Oct'r, 1842. All the foregoing debts are evidenced by bonds or accounts admitted by the Messrs. Caldwell to be due and owing by them.

The following have been entered by the undersigned in the trust deed aforesaid with the consent and by the direction of the said James and Wm. B. Caldwell, to wit:

To David Serber, the sum of $481.41, with interest from the 10th of October, 1842, evidenced by bond. To John Cauley, the sum of $311.31, with interest from 10th October, 1842, evidenced by execution. To Wm. White, the sum of $250, with interest from the 2d August, 1840; also $83.87, int. from 4th Nov. 1839; also $63.50, int. from Sep'r 20th, 1841, and $100 note executed to James White, with interest from 29th Sep'r, 1841. All the foregoing creditors have assented to the provisions of the trust deed, aforesaid, which is evidenced by letters from them or other writings.

As witness our hands, &c., this 28th day of Dec'r, 1842.

WILLIAM CARY.
JOEL McPHERSON.

Teste:
JOHN MATHEWS, *C. G. C.*

The documents, &c., are now attached and *sticked* to the said [—] in trust and delivered to Wm. Cary, trustee.

Teste: JOHN MATHEWS, *C. G. C.*

A copy from the record.
Teste: M. L. SPOTTS, *Clk.*

74 *Exhibit No. 4. Filed with Original Bill.*

This indenture, made and entered into this the 22d day of November, 1853, between John Bowyer Caldwell, Henry B. Caldwell, Lewis M. Caldwell, Edmund S. Caldwell, Bedford Caldwell and Margaret, his wife, William B. Caldwell and John F. Miller, heirs-at-law of James Caldwell, dec'd, late the owner and proprietor of five-sevenths of the estate, or lands, lying in the county of Greenbrier, known as the White Sulphur Springs, and the owners or proprietors of the residue, or remaining two sevenths thereof, of the one part, and William Hamilton Macfarland, of the city of Richmond, of the other part, witnesseth: That the said parties of the first part, for and in consideration of the covenants of the said party of the second part, hereinafter mentioned, and of the sum of one hundred dollars to them in hand paid, the receipt whereof they do hereby acknowledge, have granted, bargained, and sold, aliened, released, and confirmed, and by these presents do grant, bargain and sell, alien, release, and confirm, unto the said William H. Macfarland all and singular the lands in the said county, now or heretofore known as the "White Sulphur Springs," containing about 7,000 acres, be the same more or less, and bounded, as will be seen by reference to a full description of the boundaries of the said tract of land accompanying a plat of the same, which said plat, together with the description aforesaid of the boundaries of said land, is annexed to and is to be recorded along with
75 this indenture as a full and accurate description of the boundaries of said lands. To have and to hold the said lands, or parcels of land, together with all and singular the springs thereon and all other appurtenances, rights and hereditaments thereunto in anywise appertaining unto him, the said Macfarland, his heirs and assigns, forever. And the said parties of the first part do agree with the said Mcfarland and his assigns the premises aforesaid to him and them to warrant generally by these presents. But this indenture is upon the special confidence and trusts reposed by the parties of the first part in the said Wm. H. Macfarland, and on the following conditions, namely: That, as agent of the parties of the first part, he will effect a sale of the premises if it be in his power, on such terms as he may agree upon with the purchaser or purchasers thereof, and apply the proceeds to the payment of every lien, incumbrance, mortgage, or deed of trust thereon in the order in which they charge the same; secondly, to pay to each and every of the parties of the first part, their heirs or assigns, according as they are entitled thereunto, his, her, and their share of the residue of the proceeds of sale, after having first deducted from such proceeds ten per cent., a commission agreed to be paid to the said Macfarland as compensation for his services in and about the sale of the prem-

76 ises; and, thirdly, to reconvey the premises to the parties of the first part in the right and share in which they are entitled thereto, in the event he shall not have it in his power to sell the same. And the said Macfarland shall have full power to receive the purchase money arising from any sale which may be made by him of the premises aforesaid, and to give and grant to any purchaser or purchasers thereof full and adsolute acquittances and discharge thereof. And the said William H. Macfarland, for himself and his heirs, covenants with the said parties of the first part faithfully to keep and perform the conditions and trusts aforesaid.

In witness whereof, the parties hereto have hereunto set their hands and affixed their seals, the day and year first herein written.

JOHN BOWYER CALDWELL. [SEAL.]
H. B. CALDWELL. [SEAL.]
LEWIS M. CALDWELL. [SEAL.]
EDMUND S. CALDWELL. [SEAL.]
BEDFORD CALDWELL. [SEAL.]
MARGARET C. CALDWELL. [SEAL.]
WM. B. CALDWELL. [SEAL.]
JOHN F. MILLER. [SEAL.]
ELIZABETH COPELAND. [SEAL.]
FRANCES BEDFORD. [SEAL.]

STATE OF VIRGINIA, *City of Richmond*, } *ss:*

I, R. M. Burton, a justice of the peace in and for the said city, do certify that Wm. B. Caldwell and John F. Miller, whose
77 names are signed to the annexed writing, bearing date on the 22 day of November, 1853, have acknowledged the same before me in my city aforesaid.

Given under my hand, this 10th day of December, 1853.

R. M. BURTON, *J. P.*

STATE OF VIRGINIA, *Greenbrier, County* } *To wit:*

I, Charles Snead, a justice of the peace for the county aforesaid, in the State of Virginia, to certify that John Bowyer Caldwell, Henry B. Caldwell, Lewis M. Caldwell, Edmund S. Caldwell, and Bedford Caldwell, whose names are signed to the writing annexed, bearing date on the 22d day of November, 1853, have acknowledged the same before me in my county aforesaid.

Given under my hand, this 19th day of December, 1853.

CHARLES SNEAD, *J. P.*

STATE OF VIRGINIA, *County of Greenbrier*, } *To wit:*

We, Charles Snead and David Surber, justices of the county of Greenbrier aforesaid, in the State of Virginia, do certify that Margaret C. Caldwell, the wife of Bedford Caldwell, whose names are signed to the writing annexed, bearing date on the 22d day of

Nov'r, 1853, personally appeared before us in our county aforesaid,
and being examined by us privily and apart from her husband,
78 and having the writing aforesaid fully explained to her, she,
the said Margaret Caldwell acknowledged the same to be her act, and declared that she had willingly executed the same, and does not wish to retract it.

Given under our hands, this 19th day of Dec'r, 1853.

CHARLES SNEAD, *J. P.*
DAVID SURBER, *J. P.*

STATE OF VIRGINIA, } *ss:*
County of Greenbrier, }

I, Charles Snead, a justice of the peace for the county of Greenbrier, in the State of Virginia, do certify that Elizabeth Copeland and Frances Bedford, whose names are signed to the writing annexed, bearing date on the 22d Nov'r, 1853, have acknowledged the same before me in my county aforesaid.

Given under my hand, this 19th day of Dec'r, 1853.

CHARLES SNEAD, *J. P.*

CLERK'S OFFICE OF GREENBRIER COUNTY COURT, *June* 13, 1857.

This deed was this day presented in the office, and the execution thereof being duly certified, is admitted to record.

Teste: JOEL McPHERSON, *Clk.*

A copy from the record, except the plats and accompanying courses.

M. L. SPOTTS *Clk.*

79 *Exhibit No. 5. Filed with Original Bill.*

This indenture, made and entered into this 1st day of May, 1857, between William H. Macfarland, trustee, as hereinafter described, and William B. Caldwell of the first part, and Jeremiah Morton and Matthew F. Maury, Allen T. Caperton, R. H. Maury, Alexander K. Phillips, A. F. D. Gefford, James Hunter, and J. Warren Slaughter, of the second part, witnesseth: Whereas the springs and lands hereby by the said Macfarland conveyed to the said parties of the second part in the proportions herein declared were conveyed to him by John Bowyer Caldwell, H. B. Caldwell, Lewis M. Caldwell, Edmund S. Caldwell, Bedford Caldwell and Margaret C., his wife, Wm. B. Caldwell, Jno. F. Miller, Elizabeth Copeland, and Francis Bedford by their deed of the 22d of November, 1853, in trust to be by him sold as by said deed, which is here referred to, will appear, and the said Macfarland having sold the said springs and lands to the said parties of the second part in undivided parts or proportions following, that is to say, to the said Morton one-tenth of the said springs and lands, to the said Matthew F. Maury one other tenth thereof, to the said Caperton one-fifth thereof, to Alex'r Phillips one-tenth thereof, to J. Warren Slaughter

one other tenth thereof, and to the said R. H. Maury and R. F. D. Gefford the remaining three-tenths thereof, each of the two last separately taking a tenth, and taking
80 jointly a tenth between them, at and for six hundred thousand dollars, whereof two hundred thousand dollars is payable in ready money, each of the parties of the second part contributing in the ratio of his and their proportion of the said springs and lands, and the residue of the said purchase money being, as by the said parties of the first and second part is believed about the sum total of debts charged or chargeable upon the said springs and lands, are to be and continue subject to and liable for all debts now charged and chargeable thereupon in the order or course of succession or priority in which they are now liable or may be subjected to the claims of creditors respectively; and the said parties of the second part, avowing their purpose to be, in the purchase of said springs and lands, to organize a joint stock company under the act of March 1st, 1854, entitled an act to incorporate the White Sulphur Springs, in the county of Greenbrier, they, the said parties of the second part, covenant with the said Macfarland to issue to creditors entitled to charge the said springs and lands, who will accept thereof in satisfaction of their present claims or demands, the bonds of the joint stock company to be, as aforesaid, organized, and to have such bonds duly [——] on the said springs and lands by trust deed, securing to creditors the priority or priorities to which they are now entitled; and the said parties of the
81 second part further covenant with the said Macfarland that the said joint stock company shall and will enter into covenants and agreements with him, to protect, indemnify, and save him harmless against the claims, demands, or suits of any creditor or creditors entitled to charge the springs and lands aforesaid, who may seek to make him responsible for the application of the money to be paid by the said parties of the second part to him in hand, as aforesaid. And the said parties of the second part further covenant with the said Macfarland that the joint stock company aforesaid shall and will deliver to him the bonds thereof, payable at the end of ten years from the 1st of November next, bearing interest payable annually, charged on said springs and lands by trust deed, duly executed and recorded, wherein shall be secured the right to demand a sale in default of the payment of interest or principal as the same are payable for the sum or amount that the debts chargeable on said springs and lands shall fall below the said sum of $400,000.00. And it is covenanted and agreed by the said Wm. B. Caldwell to and with the said parties of the second part that he will protect, indemnify, and save harmless the said parties of the second part against any and all claims and demands upon or to said springs and lands above or beyond the said sum of $400,000. Furthermore, it is understood
82 between the parties of the first and second parts that the interest upon the bonds secured by a trust deed executed by James

Caldwell, dec'd, and others, to Andrew Stevenson and others, trustees, of the —— day of ——, 1836, of record in the clerk's office of Greenbrier county, shall be paid to the credit of the holders thereof in the Bank of Va., in Richmond, on the 1st day of July and January of every year, until the principal be fully paid, and if the interest be so paid the said Macfarland covenants with the said parties of the second part the payment of the principals of said bonds, or any of them, shall not be enforced prior to the 1st of May, 1862, but at the date last mentioned, or at any time thereafter, there being default in the payment of the interest or any part thereof as aforesaid, the last-mentioned covenant of the said Macfarland shall wholly cease and become void; and he being the holder of said bonds, or any of them, shall, like any other holder thereof, be at full liberty to require a sale of said lands and springs and of any other property subject to sale by said trust deed. Now, therefore, the said Macfarland, for and in consideration of the premises, and of the sum of two hundred thousand dollars to him cash in hand paid, the receipt whereof is acknowledged, doth grant unto the said parties of the second part, in the undivided proportion and interest herein above declared, all and singular the lands in the county of Green-
83 brier, now or *or* heretofore known as the White Sulphur Springs, containing about seven thousand acres, be the same more or less, comprising a number of tracts, and being the same land conveyed to the said Macfarland by the deed of the 22d November, 1853, aforesaid, and described by the plat and survey of Samuel S. Thompson accompanying the same, which are here referred to for greater certainty, reserving from this grant, as a spot to be preserved sacred, the graveyard of the family. And the said Wm. B. Caldwell, for the consideration aforesaid, and for the sum of ten dollars to him cash in hand paid, doth grant unto the said party of the second part, in the shares and proportions aforesaid, all the kitchen and household furniture used in accommodating the public at the White Sulphur Springs aforesaid, the beasts of burden, cattle, hogs, and other stock attached to the said springs in the cultivation of the farm, and all agricultural implements and other effects, not the separate property of the brothers of the said Wm. B. Caldwell. And the said Macfarland covenants with the said parties of the second part to execute and deliver such further deed for the better assurance of the title hereby intended to be conveyed, as may be wanted when thereunto requested by the parties of the second part, provided that in such further deed the said Macfarland's covenant as to the title is to extend no further than his covenant in
84 this deed, which is that he will warrant specially the property hereby conveyed. And the said parties of the first and second parts mutually covenant one with the other to keep, fulfill, and perform the things on their respective parts to be kept fulfilled

and performed as above recited, as fully as if the same were here repeated in the form of special and particular covenants.

Witness the following signatures and seals:

WM. H. MACFARLAND.	[SEAL.]
WM. B. CALDWELL.	[SEAL.]
JEREMIAH MORTON.	[SEAL.]
M. F. MAURY.	[SEAL.]
R. H. MAURY.	[SEAL.]
A. F. D. GEFFORD.	[SEAL.]
J. WARREN SLAUGHTER.	[SEAL.]
JAMES HUNTER.	[SEAL.]
A. T. CAPERTON.	[SEAL.]
H. K. PHILLIPS.	[SEAL.]

CITY OF RICHMOND, *to wit:*

I, James B. Macmurdo, a notary public for the city aforesaid, in the State of Virginia, do certify that Wm. H. Macfarland, Wm. B. Caldwell, Jeremiah Morton, M. F. Maury, R. H. Maury, A. F. D. Gefford, J. Warren Slaughter, James Hunter, A. T. Caperton, and H. K. Phillips, whose names are signed to the writing hereto annexed, bearing date on the first day of May, 1857, have acknowledged the same before me in my city aforesaid.

85 The words "eighteen hundred" between the first and second lines on the first page and the word "stock" between the 14th and 15th lines on the 3d page having been previously interlined.

Given under my hand, this 2d day of May, 1857.

J. B. MACMURDO,
Notary Public.

CLERK'S OFFICE OF GREENBRIER COUNTY COURT,
June 3d, 1857.

This deed was this day presented in the office, and the execution thereof being duly certified, is admitted to record.

Teste: JOEL McPHERSON, *Clk.*

A copy from the record.

Teste: M. L. SPOTTS, *Clk.*

Exhibit No. 6. Filed with Original Bill.

This deed, made this first day of May, 1857, between Jeremiah Morton and Jane, his wife, Matthew F. Maury and Ann H., his wife, Rob't H. Maury and Martha B., his wife, A. F. D. Gefford and Mary Ann, his wife, J. Warren Slaughter and Sally M., his wife, James Hunter and Ellen D., his wife, Allen T. Caperton and Harriet E., his wife, and Alexander K. Phillips, parties of the first part, and the White Sulphur Springs Company of the second part, witnesseth: Whereas the parties of the first part have

86 purchased the property known as the White Sulphur Springs in the county of Greenbrier, and certain personal property heretofore used in connection therewith, with the intent to avail themselves of the provisions of an act entitled an act incorporating the White Sulphur Springs, in the county of Greenbrier, passed March 1st, 1854, and having received from Wm. H. Macfarland, trustee, and Wm. B. Caldwell, a deed for the same. Now this deed further witnesseth, that for and in consideration of the premises, and of the sum of ten dollars in hand paid by the parties of the second part to the parties of the first part, they, the parties of the first part do grant to the parties of the second part the lands, springs, and other property conveyed to them by the said Macfarland and Caldwell by their deed aforesaid of even date herewith, being about seven thousand acres of land and the personal property therein mentioned. To have and to hold the said premises unto the said parties of the second part, subject to all the provisions, conditions, and undertakings set forth in the said deed of the said Macfarland and Caldwell aforesaid, and the parties of the first part, with the parties of the second part, covenant specially that they, the parties of the second part, shall have, enjoy, and possess the title, rights, and interest of the parties of the first part derived by and under the deed aforesaid, and that they will execute any further deed necessary and appropriate to vest the said lands

87 and other property in them, the said parties of the second part.

Witness the following signatures and seals:

JEREMIAH MORTON.	[SEAL.]
JANE MORTON.	[SEAL.]
M. F. MAURY.	[SEAL.]
A. H. MAURY.	[SEAL.]
R. W. MAURY.	[SEAL.]
M. B. MAURY.	[SEAL]
A. F. D. GIFFORD.	[SEAL.]
MARY ANN GIFFORD.	[SEAL.]
J. WARREN SLAUGHTER.	[SEAL.]
SALLY M. SLAUGHTER.	[SEAL.]
JAMES HUNTER.	[SEAL.]
ELLEN D. HUNTER.	[SEAL.]
ALLEN T. CAPERTON.	[SEAL.]
HARRIET E. CAPERTON.	[SEAL.]
A. K. PHILLIPS.	[SEAL.]

CITY OF RICHMOND, *to wit:*

I, James B. Macmurdo, a notary public for the city aforesaid, in the State of Virginia, do certify that Jeremiah Morton, M. F. Maury, R. H. Maury, A. F. D. Gifford, J. Warren Slaughter, James Hunter, Allen T. Caperton, and A. K. Phillips, whose names are signed to the writing hereto annexed, bearing date on the 1st day of May,

1857, have acknowledged the same before me in my city aforesaid.
Given under my hand, this 2d day of May, 1857.

J. B. MACMURDO,
Not'y Public.

The words " parties of " between the 4th and 5th lines from the bottom were interlined before the acknowledgment of the above parties.

88 STATE OF VIRGINIA, *City of Richmond*, } *To wit:*

I, James B. Macmurdo, a notary public for the city of Richmond, in the State of Virginia, do certify that Martha B. Maury, the wife of R. H. Maury, whose names are signed to the writing hereto annexed, bearing date on the first day of May, 1857, personally appeared before me in the city aforesaid, and being examined by me privily and apart from her husband, and having the writing aforesaid fully explained to her, she, the said Martha B. Maury, acknowledges the said writing to be her own act, and declared that she had willingly executed the same, and does not wish to retract it.
Given under my hand, this 2d day of May, 1857.

J. B. MACMURDO, *Not'y Public.*

STATE OF VIRGINIA, *Corporation of Fredericksburg*, } *To wit:*

I, William A. Garnett, a notary public for the corporation aforesaid, in the State of Virginia, do certify that Ann H. Maury, the wife of Mathew F. Maury, and Sally M. Slaughter, the wife of J. Warren Slaughter, whose names are signed to the writings hereto annexed, bearing date on the 1st day of May, 1857, personally appeared before me in the corporation aforesaid, and being examined by me privily and apart from their husbands, and having the writing aforesaid fully explained to them, they, the said Ann H. Maury and Sally M. Slaughter, severally acknowledged the said writing to be their act, and declared that they had willingly executed the same,
89 and did not wish to retract it.
Given under my hand, this 6th day of May, 1857.

WM. A. GARNETT, *Notary Public.*

STATE OF VIRGINIA, *Caroline County*, } *To wit:*

We, W. R. B. Wyatt and Thomas T. Chandler, justices of the peace in the county of Caroline, in the State of Virginia, do certify that Ellen D. Hunter, the wife of Jas. Hunter, whose names are signed to the writing hereunto annexed, bearing date on the 1st day of May, 1857, personally appeared before us in the county aforesaid, and being examined by us privily and apart from her husband, and having the writing aforesaid fully explained to her, she, the said Ellen D. Hunter, acknowledged the said writing to be her act,

and declared that she had willingly executed the same, and does not wish to retract it.

Given under our hands, this *this* 12th day of May, 1857.

W. R. B. WYATT, *J. P.*
THOS. T. CHANDLER, *J.P.*

STATE OF VIRGINIA, *City of Richmond*, } *ss:*

I, James B. Macmurdo, a notary public for the city of Richmond, in the State of Virginia, do certify that Jane Morton, the
90 wife of Jeremiah Morton, whose name is signed to the writing hereto annexed, bearing date on the 1st day of May, 1857, personally appeared before me, in the city aforesaid, and being examined by me privily and apart from her husband, and having the writing aforesaid fully explained to her, she, the said Jane Morton, acknowledged the same to be her act, and declared that she had willingly executed the same, and does not wish to retract it.

Given under my hand, this 13th day of May, 1857.

L. B. MACMURDO,
Notary Public.

STATE OF VIRGINIA, *City of Richmond*, } *ss:*

I, Samuel T. Bagby, a notary public for the city of Richmond, in the State of Virginia, do certify that Mary Ann Gifford, the wife of A. F. D. Gifford, whose names are signed to the writing above, bearing date on the 1st day of May, 1857, personally appeared before me, in the city aforesaid, and being examined by me privily and apart from her husband, and having the writing aforesaid fully explained to her, she, the said Mary Ann Gifford, acknowledged the same to be her act, and declared that she had willingly executed the same, and did not wish to retract it.

Given under my hand, this 26th day of May, 1857.

SAM'L T. BAGBY,
Notary Public.

STATE OF VIRGINIA, *Monroe County*, } *ss:*

91 I, Lewis E. Caperton, a notary public for the county of Monroe, do certify that Harriet E. Caperton, the wife of Allen T. Caperton, whose names are signed to the annexed writing, bearing date the 1st of May, 1857, personally appeared before me in the county aforesaid, and the said Harriet E. being examined privily and apart from her husband, and having the writing aforesaid fully explained to her by me, she, the said Harriet E. Carpenter, declared that she had willingly executed the same, and does not wish to retract it.

Given under my hand, this 13 day of June, 1857.

LEWIS E. CAPERTON,
Notary Public.

CLERK'S OFFICE OF GREENBRIER COUNTY COURT, *June 16th*, 1857.

This deed was this day presented in the office, and the execution thereof being duly certified, is admitted to record.

Teste: JOEL McPHERSON, *Cl'k.*

A copy from the record.

Teste: M. L. SPOTTS, *Cl'k.*

92 *Exhibit No. 7. Filed with Original Bill.*

Whereas at the time of the purchase of the White Sulphur Springs property by Allen T. Caperton and his associates, who now compose the corporation known as the White Sulphur Springs Company, from Wm. H. Macfarland, trustee, appointed by deed to make sale of the same by Wm. B. Caldwell and others, there existed upon said property certain liens by deeds of trust, judgments, &c., and whereas an arrangement was entered into between the said Allen T. Caperton, acting in behalf of himself and his said associates, purchasers of the White Sulphur Springs, and certain lands and personal property of the said Wm. H. McFarland, trustee as aforesaid, of the one part, and certain of the creditors of Jas. Caldwell, dec'd, and Wm. B. Caldwell and others, heirs of the said Jas. Caldwell, dec'd, holding liens as aforesaid, of the other part, which agreement contains recitals that are substantially as follows, viz.:

Whereas the purchase by the said Caperton and his associates aforesaid was on the condition that the creditors of the said Jas. Caldwell, W. B. Caldwell, and any other of the heirs of the said Jas. Caldwell entitled to liens by trust deed or otherwise on the premises purchased, except the creditors by and under the deed of trust of the 3d day of March, in the year 1836, securing a debt of $100,000 in the aggregate, to Messrs. Singleton, Tabb, Wilcox, Stuart and others, which is continued in full force, wholly unaffected by said agreement, should accept the bonds of the joint stock

93 company to be organized by the said Caperton and his associates under the act of March 1854, entitled an act incorporating the White Sulphur Springs, in the county of Greenbrier, charged on said purchased premises by trust deed, or deeds, duly executed and recorded, securing to said creditors in the order or course of succession in which the premises may be now subjected to the payment of their debts respectively, the principal and interest of their respective debts, that is to say, the debt of each and every creditor is to be computed up to the 15th day of October, next, [1857], and a bond duly executed and delivered to the said creditors respectively, for the aggregate of principal and interest payable at the end of ten years, or sooner, at the discretion of the obligors in said bonds, but the interest on such aggregate, at the rate of six per cent, shall be payable annually on the 15th day of October, and the trust deed to secure said bonds shall provide for the payment of said interest annually, as well as the principal, at the end of ten years, with authority to the creditors, or any of them,

to require a sale of the premises, whenever the payment of the said interest, or of said principal shall be in arrear; the said bonds to be accepted in lieu of the debts and claims of said creditors against the said James Caldwell, Wm. B. Caldwell, and any other heir of him, the said Jas. Caldwell, who are to be discharged from the claims, demands, and suits of the said creditors, re-
94 spectively, and the said creditors, desiring to confirm the purchase made as aforesaid by the said Caperton and his associates, agree to accept of said bonds for and in substitution of their respective debts, and to discharge the said Jas. Caldwell, Wm. B. Caldwell, and other heirs aforesaid, it being understood that until such bonds and trust deeds are duly executed and delivered the said creditors shall be entitled to their liens by their trust deeds, or otherwise, and to their action against the debtor parties or persons; and that the trust deed to be executed as aforesaid shall place the said creditors respectively on the same footing they now occupy in respect to the order in which they may or can resort to the premises in charging the same with their debts; and time was given to the said Caperton and his associates to execute and deliver the bonds and trust deed to be by the said joint stock company executed and delivered as aforesaid;

And whereas it was agreed by other creditors of the estate of said Jas. Caldwell, dec'd, and of Wm. B. Caldwell, who had no liens, by judgments or otherwise, upon the White Sulphur Springs property, by which they bound themselves to grant an indulgence of ten years, from the 15th day of October, 1857, upon their said claims, respectively, provided the said company, then to be organized, upon the purchase of the White Sulphur Springs by A. T. Caperton and his associates, would execute to them their obligations, re-
95 spectively, for the principal and interest of their several claims, computed to the 15th of October, 1857, payable in ten years thereafter, the interest to be paid annually, and that the said company shall secure the said obligation by deed of trust on the White Sulphur Springs, conditioned for their payment after the said company shall have discharged the other incumbrances by their deed of trust to secure the creditors of the White Sulphur Springs having liens on the same; and they further bound themselves to discharge the said James Caldwell's estate and Wm. B. Caldwell from their liabilities when the said creditors should receive the obligations as aforesaid of said company;

And whereas the said Allen T. Caperton and his associates, after having purchased the White Sulphur Springs property as aforesaid, organized themselves into a joint stock company, under the provisions of the said act of Assembly of 1st of March, 1854, entitled "An act incorporating the White Sulphur Springs, in the county of Greenbrier;" and the said company, with a view of carrying into complete effect the stipulations and provisions of the contracts and agreements aforesaid, has executed bonds to the said several creditors therein mentioned, all bearing date on the 15th of October,

1857, and providing for the interest thereon annually; a
96 schedule of each class of bonds, those executed for debts heretofore operating as liens on the lands and property aforesaid, and those executed for debts not heretofore operating as liens, is herewith made out and filed as part of this indenture, headed with "A list of bonds issued by the White Sulphur Springs Company for old debts due from the former proprietors and secured by a deed of trust, executed on the 15th day of October, 1857, by the White Sulphur Springs Company," and signed at the foot thereof by A. F. D. Gifford, president of the company—

Now this indenture, made this 15th day of October, 1857, by the White Sulphur Springs Company, of the first part, Peachy R. Grattan, John Echols, and Robert F. Dennis, of the second part, and the creditors aforesaid, of the third part:

Witnesseth, that said White Sulphur Springs Company, for and in consideration of one thousand dollars in hand paid, the receipt whereof is hereby acknowledged, and with a view of carrying into effect the contracts and agreements aforesaid, hath, and by these presents doth give, grant, bargain, sell, and convey unto the said Gratton, Echols, and Dennis, their heirs and assigns, forever, all that certain tract or parcel of land in Greenbrier county, known as the White Sulphur Springs, containing by estimation seven thousand acres, conveyed by John Bowyer Caldwell and others to William H. Macfarland, in trust, to sell, &c., by deed bearing date
97 on the 22d day of November, 1853, and of record in Greenbrier county, and conveyed by the said Macfarland to Jeremiah Morton and others by deed bearing date the 1st day of May, 1857, also of record in said county court, to which reference may be made for greater certainty, with all and singular the appurtenances thereunto belonging, or any wise appertaining; also all the personal property embraced in two schedules, which are to be taken, held, and recorded as parts to this deed. The one schedule is headed "list of personal property at the White Sulphur Springs, June the 10th, 1857." The other headed "list of personal property in and about Mastin's, or White Sulphur Springs Hotel, now on the premises, which is to be given up to the White Sulphur Springs Company as having been the property of Wm. B. Caldwell, acting for himself and others, members of his family, June 20th, 1857," which articles of personal property are to be preserved, or a like number of kind to be supplied in their stead.

And the said White Sulphur Springs Company covenant to warrant the title generally to the lands and appurtenances aforesaid.

Nevertheless, this conveyance is made to the said Peachy R. Grattan, John Echols, and Robert F. Dennis, upon this express trust and confidence, that they hold the said lands and
98 property subject to the use of the said White Sulphur Springs Company until default be made, either in the payment of the interest annually upon said bonds, or in the payment of the debts, with any interest which may have accrued thereon at the

end of the said ten years from the 15th day of October, 1857, and in the event that the annual interest aforesaid shall be due and unpaid upon the said bonds, or any of them, for any one year or more, the said Grattan, Echols, and Dennis, or a majority of them, or the survivor or survivors of them, shall, upon the application of the holders of any one of the bonds aforesaid, on which interest remains so due and unpaid, proceed to sell at public auction for ready money, so much of the said property, either real or personal, as they may deem best, as will pay the interest on all the said bonds which may remain due up to the 15th October next preceding the said sale and the costs of making the sale, and shall pay the same over to the parties respectively entitled to the same. But before any sale shall be made for interest as aforesaid, the said trustees shall advertise the time and place of making the same in a newspaper published in the town of Lewisburg, one published in the city of Richmond, and one published in the city of Washington, for eight weeks
99 before the sale. And in the event that default be made in the payment of the said debts, and any interest which may have accrued on the bonds aforesaid at the end of the said ten years, then the said trustees, or a majority of them, or the survivors or survivor of them, shall, upon the application of any of said creditors, proceed to sell the said real and personal property and appurtenances for cash to the highest bidder, after advertising the time and place [the premises] of sale for eight weeks in a newspaper published in the city of Richmond, and one published in the city of Washington, and one published in the town of Lewisburg, and out of the proceeds of such sale, shall first pay the costs and commissions attending the sale, then the debts now secured by liens, according to their respective priorities, as they now exist upon the lands and property, and then pay off the bonds aforesaid, for which heretofore no liens have existed, in ratable proportion, and the residue, if any, they shall pay over to the said White Sulphur Springs Company. And whereas there are certain trust and judgment creditors of the said James and Wm. B. Caldwell, who, by virtue of such trusts and judgments, have liens upon the lands, &c., herein before conveyed to the said Grattan, Echols, and Dennis, who may hereafter devise to receive the bonds of
100 the White Sulphur Springs Company on the same terms that the other lien creditors have received them, in that event liberty is reserved to the said company to issue the same, if it see proper so to do, within one year from the date of these presents, and shall add a list thereof, with the date and amount, to the bottom of the list hereinbefore referred to, and thereupon the said bond creditors, last aforesaid, shall stand on the same footing with the other creditors who have taken bonds of the company for debts which operated as liens upon the said property.

In testimony whereof, the said White Suphur Springs Company have, by their president, A. F. D. Gifford, signed this deed and

affixed to it the seal of the company, the day and year hereinbefore written.

[L. S.] A. F. D. GIFFORD,
Pres'd't W. S. S. Co.

Schedules.

"A list of Bonds issued by the White Sulphur Springs Company, for old debts due from the former proprietors, and secured by a deed of trust, executed on the 15th day of October, 1857, by the White Sulphur Springs Company."

101 *To whom or for whose benefit the following bonds are executed.*	*Date of bond.*	*Debts heretofore operating as liens on land and property.*
	1875.	
To Sam'l Price, Mason Mathews, and Thos. Mathews, ex'ors of Henry Erskine, dec'd	Oct. 15.	$21,848 69
Ditto, ditto, ditto	"	21,848 69
Ditto, ditto, ditto	"	21,848 69
Sam'l C. Beard, adm'r *de bonis non* of C. Beard, dec'd	"	907 67
Thos. M. Smith	"	5,327 92
Joseph Allen	"	1,333 87
Allen T. Caperton, ass'ee W. S. & Co.	"	2,000 00
Ditto, do.	"	2,000 00
Ditto, do.	"	2,000 00
Ditto, do.	"	2,000 00
Ditto, do.	"	2,000 00
Ditto, do.	"	1,174 95
John J. Moorman, ass'ee H. W. & J. J. Fry	"	2,000 00
Ditto, do.	"	2,000 00
Ditto, do.	"	2,000 00
Ditto, do.	"	2,000 00
Ditto, do.	"	1,883 85
P. Cullen, ass'ee of W. Boothe	"	1,195 44
David Tuckwiller	"	5,579 14
Chas. McClung and G. A. Rader, adm'rs.	"	7,997 73
Edward H. Farnsworth	"	400 79
Paul McNeal	"	1,494 56
James M. Nickell	"	471 29
Randolph Stalnaker	"	1,180 90
Personal rep's of Wm. Paxton	"	1,963 50
Thos. Mathews, surviving partner	"	2,468 67
Am't carried to next page		$116,926 35

102	Am't forward	Oct. 15.	$116,920	26
	To James Evans	"	$1,007	10
	Alexander Duvall	"	1,375	58
	Oliver F. Winchester	"	128	76
	Ric'd Crouch, trustee	"	1,027	62
	Rob't Dickson	"	2,230	20
	Wm H. McFarland, trustee, for debt of Henry Mann	"	1,000	00
	Same	"	1,000	00
	Same	"	1,000	00
	Same	"	1,000	00
	Same	"	1,000	00
	Same	"	1,000	00
	Same	"	1,000	00
	Same	"	1,000	00
	Same	"	1,000	00
	Same	"	1,000	00
	Same	"	765	34
	Personal rep's of James Dorsey, 4 bonds of $1,000.00 each	"	4,000	00
	Same	"	705	87
	Stuart McClung	"	2,008	74
	James M. Nickell, adm'r of Isaac	"	981	21
	Willis Mann	"	2,185	33
	J. H. Boswell	"	2,784	90
	H. H. Watson, 2 bonds, $2,500.00 ea	"	5,000	00
	Do. 3 " $2,000.00 "	"	6,000	00
	Do. 1 " for	"	976	63
	Jacob Heald & Co	"	1,850	39
	Mrs. Margaret P. Callison, ex'tr'x	"	2,384	57
	Jas. A. Frazer, ex'or of Jas Frazer	"	1,232	08
	Jas. Long	"	1,644	00
	John Surbough	"	925	82
	Durby & Farnham	"	479	86
			$49,694	00
103				
	To Wm. H. Mcfarland, trustee, for debt of Wm. McCreary	"	$805	00
		"	1,000	00
	Floyd Estill, ass'ee of D. Surber	"	325	11
	Fav'r of John Cauley	"	319	87
	To Ro. P. White, ex. of Wm. White	"	1,002	37
	Leven M. Powell	"	4,499	87
	Jacob Eakle	"	1,140	50

The preceding list, except the debts to H'y Erskine, ex'or, is taken from the trust deed of 10th Oct., 1842, and have not been sued on.

To fav'r of Wm. A. Harper, ex'r of John Harper, dec'd, 4 bond $1,000.00 ea	Oct. 15.	$4,000 00
1 "	"	742 17
Favor of Steele & McDaniel	"	626 02
Same	"	192 40
Sam'l Hamilton and J. M. Nickell, adm'r.	"	11,865 40
" " ½ debt of H. and N	"	2,529 65
James M. Nickell, do.	"	2,529 65
James Jarrett, Sr., bal. judg't	"	2,078 15
Personal rep's of John A. North, dec'd	"	1,000 00
His int. in Jarrett's judg't	"	1,000 00
	"	1,000 00
	"	755 73
Jas. M. Nickell, adm'r of Isaac	"	164 27
Favor of Thos. Nickell and Sam'l Hamilton, ex'ors of And. Nickell, dec'd	"	1,763 47
Lewis M. Caldwell, for Snead's debt	"	789 40
Do. do.	"	789 40
Wm. H. McFarland, for F. B. K., Va. debt of 7 bonds, ea. $1,000.00	"	7,000 00
Do. 1 "	"	796 98
104		
Wm. F. Butler, for Smith & Butler	"	2,241 63
Personal rep's of John A. North, dec'd, debt of George White	"	524 30
		$51,481 34
Favor of Eliz'th Stuart's ex'ors	"	$60 57
John Surbough [for Ann's debt]	"	140 77
Wm. H. Macfarland, [Shields & S. debt], 3 bonds of $1000.00 ea.	"	3,000 00
1 bond	"	332 27
John McCarty	"	696 51
John M. Alderson	"	1,048 70
Joel McPherson, 4 bonds of $1,000.00 ea.	"	4,000 00
1 bond	"	648 20
Same, debt D.T. Watson, 3 bonds, $1000 ea	"	3,000 00
Same, " " 1 "	"	802 33
Same, " " 2 "	"	2,000 00
Same, " " 1 "	"	744 69
Wm. H. Macfarland, for John G., 3 bonds of $1000.00 ea	"	3,000 00
1 bond	"	740 65
Personal rep's of Hugh Wilson	"	1,446 06
John Surbough	"	1,082 31
A. T. Caperton, ex'r for H. Caperton, for Dickson's debt	"	853 21

To A. T. Caperton and ex'ors of Ro. Campbell	Oct. 15.	$346 85
Wm. H. Macfarland, ass'ee of J. A. Rowan	"	309 89
Smith, Durdee & Morris	"	132 99
Smith & Palmer	"	383 02
Sam'l Price for F. Robert's debt	"	105 30
Jno. M. Dunbar, ass'ee	"	88 93
Wm. H. Macfarland, trustee	"	77 36
Wm. Skeen, adm'r of Morrison	"	550 87
Jessee Bright, ass'ee	"	115 12

105

A. T. Caperton, ex'or of H. Caperton	"	249 40
Joel McPherson, ass'ee of Jas. Frazer	"	1,065 94
Same, [Robert's debt]	"	989 97
		$28,011 91
George White	"	$590 71
Joel McPherson, for his portion paid bank debts	"	1,227 16
Fav'r Wm. H. Macfarland, trustee	"	435 49
Sam'l McClung, Gibb's debt	"	207 08
H'y W. Bowyer, ass'ee Goodwin & Co.	"	704 68
A. A. & M. Chapman, ex'ors	"	482 91
James K. Hall	"	569 42
Personal rep's of J. A. North	"	1,051 65
O. P. H. Stern	"	450 71
Wm. H. Macfarland, trustee Wm. Casper	"	815 76
Gay, Mathews & Co., late merchants	"	2,063 24
A. T. Caperton, exo., [Easley for C. & Crump]	"	339 06
Personal rep's of Wm. Paxton	"	702 43
Sam'l Hamilton and Jas. M. Nickell, ex'ors	"	1,194 89
John Snyder	"	168 05
		$11,003 24

The foregoing embraces, as far as ascertained, the debts heretofore operating as liens, whether by trust deeds or judgments against Jas. Caldwell, dec'd, and Wm. B. Caldwell, or against either of them.

A list of bonds issued by the White Sulphur Springs Company for debts owing by the former proprietors, but which *have not* heretofore operated as liens, being neither in the form of
106 judgments or trust deeds. Am't of debts bro't of lien list.

	1875.	
Bond to Addison Frazer	Oct. 15.	$542 45
Floyd Estill	"	1,363 39
Sam'l Hamilton and J. M. Nickell, Esq'r	"	357 10
James M. Nickell	"	3,569 55
Same (Thos. Nickell's debt)	"	53 42
Same	"	1,369 46
Alex. Jackson	"	130 55
Burdett & Crawford	"	76 10
Same and same	"	27 84
Geo. Johnston	"	204 25
Sam'l Hamilton	"	95 61
Robt. H. White	"	562 98
Wm. Nelson	"	73 98
Richard Dickson	"	497 27
Beirne & Nesmith	"	311 05
P. Beirne	"	205 10
Thos. A. Bell	"	734 77
Edwin Mathews, 3 bonds, $1,000 ea.	"	3,000 00
Same, 1 "	"	853 12
Wm. H. Terrell, 6 " $1,000 ea.	"	6,000 00
Same 1 "	"	678 75
P. A. Prindle, 12 " $1,000 ea.	"	12,000 00
Same, 1 "	"	843 75
Hugh A. Watt, 2 "	"	2,055 00
Davidson	"	398 05
E. T. Cannon, adm'r of S. Bonwenter	"	667 88
J. C. Ludington	"	319 55
Addie & Gray	"	1,130 52
		$38,121 39

See next page for list of property.

107 *List of Personal Property at the White Sulphur Springs, June 10th, 1857.*

906 mattresses, 457 bedsteads, 1,055 pillows, 471 blankets, 673 pillow cases, 118 counterpanes, 1,090 towels, 174 col'd spreads, 1,011 sheets, 177 curtains, 299 comforts, 463 tables, 544 tumblers, 264 pitchers, 603 wash bowls, 302 look[ing]-glasses, 303 candle sticks, 371 chambers, 17 washstands, 1,496 chairs, 2 pianos, 13 sofas, 30 chairs, 5 tables, 202 table cloths, 90 table spoons, 50 tea spoons, 100 salt spoons, 182 forks, 30 sugar tongs, 116 large case knives, 96 small forks, 51 castors, 13 double-plated knives, 91 pitchers, 139 cream pots, 130 sugar dishes, 2,088 large plates, 1,068 small plates, 412 deep do., 264 butter do., 204 salt cellars, 35 mustard

cans, lot of paintings, ornamental furniture in parlor of reception house.

A true copy of the list taken at the time, Sep. 15, 1857.

R. E. HUGHSON, *Sec.*

List of personal property in and about Mastin's or White Sulphur Hotel now on the premises, and which is to be given up to the White Sulphur Springs Company as having been the property of Wm. B. Caldwell, acting for himself and others, members of his family, June 20th, 1857.

22 double bedsteads, 52 single do., 53 tables, 158 chairs, 1
108 wash stand, 1 carpet, 3 sofas, 59 wash bowls, 47 pitchers, 37 chambers, 44 looking glasses, 21 tumblers, 13 feather beds, 132 mattresses, 54 blankets, 106 sheets, 68 counterpanes, 91 pillows, 101 pillow cases, 48 bolsters, 16 dishes, 31 vegetable dishes, 12 pr. shovel and tong, 5 flat irons, 13 hand irons, 10 fenders, 50 candlesticks, 2 stoves, (not pd. for, due to Skeen & Hart,) 15 bed *valen*, 28 table cloths, 59 curtains, 25 comforts, 14 pr. snuffers, 31 towels, 1 carpet, 1 safe, and 1 knife box, 1 cooking stove and fixtures, 3 kettles, 2 ovens, and 4 pots, 10 decanters, 13 tumblers, 2 demijohns, 1 desk, 2 lanterns, 16 buckets, 19 salt stands, 71 plated table spoons, 70 do. tea spoons, 16 salt do., 17 sugar dishes, 13 cream pitchers, 43 cups, and 78 saucers, 57 plates, 11 bake pans, 11 dishes, 52 plated forks, 7 dessert spoons, 8 pr. sugar tongs, 59 knives, and 63 forks, 4 dining tables, 3 side do., 2 tea urns, 1 coffee do., 1 soup do., 3 egg boilers, 2 pickle dishes, 7 preserve do., 93 plates, 15 side dishes, 1 *chaffin* dish, 9 pitchers, 3 molasses cans, 3 waiters, 4 axes, 1 lot soap, 2 hogs, 1 plough, 1 wheelbarrow, 1 fork, 1 shovel, 2 cows, 2 calves, and 1 wagon; $24 due to Isaac Siers; 1 plough, $6.25 due to C. Hemperstall; 3 hogs, to pay; 3 clocks, 1 piano, 1 centre table, 1 large looking-glass, 2 rocking chairs, 8 com. do., 1 platform scales, 1 carpet, and 1 rug, 1 pr. andirons, 1 fender, 4 curtains, 1 lamp, 1 lot tins, &c., in spring house.

A true copy fom the list taken at the time.

R. E. HUGHSON, *Sec.*

Sep. 17, 1857.

109 CLERK'S OFFICE OF GREENBRIER COUNTY COURT,
Oct. 15*th*, 1857.

This deed, with the schedules referred to therein, was presented in the office, and the execution thereof being duly acknowledged by A. F. D. Gifford, pres'd't Wh. S. S. Co., is admitted to record.

Teste: JOEL McPHERSON, *Cl'k.*

A copy. Teste: M. L. SPOTTS, *Cl'k.*

Exhibit No. 8. *Filed with Original Bill.*

Whereas, by the contracts made between the White Sulphur Springs Company and the creditors of James Caldwell dec'd, and

of William B. Caldwell, and any of the other heirs of the said James Caldwell, dec'd, by which said creditors respectively agreed to take the bonds of the said company for the aggregate of the principal of their debts and the interest theron, computed to the 15 day of October, 1857, payable ten years from that date, and bearing interest from that date, it is provided that the interest on such aggregate, at the rate of six per cent., shall be payable annually on the 15 day of October, and the trust deed to secure said bonds shall provide for the payment of said interest annually, as well as of the principal at the end of ten years, with authority to the creditors, or any of them, to require a sale of the premises whensoever the
110 payment of the said interest or of such principal shall be in arrears.

And whereas the deed of trust executed by the said company to Peachy R. Gratten, John Echols, and Robert F. Dennis, trustees, to carry into effect the said contracts signed and sealed by A. F. D. Gifford, the president of the said company, and bearing date the 15 day of October, 1857, contains the following provision, to wit: That in the event that the annual interest aforesaid shall be due and unpaid upon the said bonds, or any of them, for any one year or more, the said Gratten, Echols, and Dennis, or a majority of them, or the survivor or survivors of them, shall, upon the application of the holder of any one of the bonds aforesaid, on which interest remains so due and unpaid, proceed to sell at public sale, for ready money, so much of the said property, either real or personal, as they may deem best, as will pay the interest on all the said bonds which may remain due up to the 15th day of October, next preceding the said sale, and the costs of making the sale, and shall pay same over to the parties respectively entitled to the same; but before any sale shall be made for interest as aforesaid the said trustees shall advertise the time and place of making the same, in a newspaper published in the town of Lewisburg, one published in the city of Richmond, and one published in the city of Washington, for eight weeks before the sale.

111 And in the event that default be made in the payment of the said debts and any interest which may have accrued on the bonds aforesaid at the end of the said ten years, then the said trustees, or a majority of them, or the survivor or survivors of them, shall, upon the application of any of said creditors, proceed to sell the said real and personal property and appurtenances, for cash, to the highest bidder, after advertising the time and place (the premises) of sale for eight weeks in a newspaper published in the city of Richmond, and one published in the city of Washington, and one published in the town of Lewisburg, and out of the proceeds of such sale shall first pay the costs and commissions attending the sale, then the debts now secured by liens, according to their respective priorities as they now exist upon the lands and property, and then pay off the bonds aforesaid, for which heretofore no liens have ex-

isted, in ratable proportions, and the residue, if any, they shall pay over to the said White Sulphur Springs Company.

And whereas a question has arisen between some of the said creditors and the said company as to whether the said provisions for the sale of the said property, set forth above, are in conformity with the said contracts, by which the said creditors agreed to accept the bonds of the said company for their debts against
112 the Caldwells as aforesaid, the said creditors claiming that, by a fair construction of the said contracts, they are entitled to a deed of trust, which shall provide for a foreclosure of the deed and sale of the entire premises and payment of their principal as well as interest in arrears, at any time that said company may make default in the payment of interest annually, though the ten years may not have expired at the happening of such default, and the said company being of opinion that the provisions quoted above from the said deed of trust gives the true construction to the said contracts in this respect.

But the said company, not wishing to deprive the said creditors, or any of them, of any benefit or advantage to which they may be entitled under the said contract, which is substantially recited in the said deed of trust of 15th October, 1857, and it being desirable to the said creditors, as well as to the said company, that this question should interpose no difficulty in the way of perfecting the arrangement aforesaid agreed upon by the said contract, as it cannot become a question of practical importance, except in the event of the company making default in the payment of the annual interest, the said company have agreed to substitute in lieu of the provisions above quoted from the said deed of trust of 15th October, 1857, and to constitute a part of the first deed, the following provisions, [neither party waiving their right to insist upon
113 their construction of the said contract as aforesaid, if it should become necessary, in their judgment, to do so,] to wit, the said creditors, or any of them, shall have the right to require the said Grattan, Echols, and Dennis, or a majority of them, or the survivor or survivors of them, to sell the said premises whenever the payment of the said interest, or the said principal shall be in arrears.

In testimony whereof, the said White Sulphur Springs Company have, by their president, Jeremiah Morton, signed this deed and affixed to it the seal of the said company, this 7th day of December, 1857.

[SEAL.] JEREMIAH MORTON,
President of the White Sulphur Springs Company.

CITY OF RICHMOND, *State of Virginia*, } *To wit:*

This day personally appeared before me, a notary public for the city aforesaid, Jeremiah Morton, president of the White Sul-

phur Springs Company, and acknowledged his signature and the seal of the company to the writing hereto annexed.

Given under my hand, this 26th February, 1858.

R. B. CURYAN,
Notary Public.

CLERK'S OFFICE OF GREENBRIER COUNTY COURT,
April 12th, 1858.

114 This instrument of writing was this day presented in the office, and the execution thereof being duly certified, is admitted to record.

Teste: JOEL McPHERSON, *Clk.*

A copy from the record.

Teste: M. L. SPOTTS, *Clk.*

Exhibit No. 9. Filed with Original Bill.

This indenture, made this 3d day of September, 1858, between the White Sulphur Springs Company, of the first part, Peachy R. Grattan, John Echols, and Robert F. Dennis, of the second part, and the creditors, whose names are hereafter mentioned, of the third part, witnesseth: That whereas the said White Sulphur Springs Company is justly indebted to John Callaghan in the sum of $751.89 cents, by coupon bond No. 199; to David Watts, in the sum of nine hundred and eighty-four dollars forty-four cents, by coupon bond No. 200; to Smith & Roberts, in the sum of $669.90 c., by coupon bond No. 201; to James White, in the sum of $163.83 cts., by coupon bond No. 202; to William B. Caldwell, in the sum of $3,179.54 cents, by four coupon bonds No. 203 for $1,910.20 cts, No. 204 for $786.16, No. 208 [for] $200.00, and No. 209 for $253.18 cts; to James M. Nickell, in the sum of one hundred dollars, by coupon bond No. 205; to Henry Booker, in the sum of $1,250.00, by coupon No. 206; and to John Beamer, in the sum of $200, by coupon bond No. 207; which bonds all bear date on the 24th day of August, 1858, on which interest is payable annually on the 15th day of Oc-

115 tober, and the principal to be due in ten years from date.

And whereas the said White Sulphur Springs Company, on the 15th day of October, 1857, did convey their lands and personal property in Greenbrier county to the aforesaid Grattan, Echols, Dennis, in trust, to secure certain creditors therein mentioned, and on the 7th day of December, 1857, did execute an explanatory deed to said trustees, Grattan, Echols, and Dennis, having reference to the duties of said trustees and the rights of the creditors, under the deed of the 15th of October, 1857, both of which deeds are placed upon record in the clerk's office of Greenbrier county, and to them so of record reference may be made for greater certainty; and whereas the said White Sulphur Springs Company desire to secure the creditors hereinbefore mentioned in the same manner and to the same

extent that the creditors mentioned in the deeds of the 15th of October, 1857, and of the 7th of Dec., 1857, are secured.

Now, this indenture further witnesseth, that the said White Sulphur Springs Co., for and in consideration of the premises and the further consideration of the sum of one dollar to it in hand paid by the said Grattan, Echols, and Dennis, at and before the ensealing of these presents, hath, and by these presents doth give, grant, bargain, sell, and convey unto the said Grattan, Echols, and Dennis, their heirs and assigns, forever,
116 all the lands and other property mentioned and conveyed in and by the deeds aforesaid of the 15th October and the 7th of Dec., 1857, or either of them, with the appurtenances. And the said company covenants to warrant generally the title thereto, subject to the liens of the deeds aforesaid, upon trust, nevertheless, that the said company shall be permitted to use and enjoy the said land and other property until default shall be made in the payment of the said bonds with the interest annually as aforesaid, the same to be paid in the same manner in which the debts in the deeds aforesaid are to be paid, and in the event of such default the trustees aforesaid, a majority of them, or the survivor of them, the said property, lands, &c., shall and may be sold at the same times, on the same terms and upon like conditions mentioned in the deeds aforesaid, it being the intention of this indenture to place the aforesaid creditors on the same footing of the creditors mentioned in the deeds aforesaid of the 15th October and 7th Dec., 1857, so far as the same is practicable, subject, however, to their prior liens.

In witness whereof, the said White Sulphur Springs Company, by its president, has executed this indenture by signing the same, and affixing the corporate seal of the company thereto, this 3d day of Sept., 1858.

[SEAL.] G. W. CARLYLE WHITING,
President.

COUNTY OF GREENBRIER, *to wit:*

117 I, John Bowyer Caldwell, a justice of the peace for said county, in the State of Virginia, do certify that G. W. Carlyle Whiting, whose name is signed to the writing annexed, bearing date on the 3d day of Sept., 1858, acknowledged the same before me in my county aforesaid.

Given under my hand, this 3d day of Sept., 1858.

JOHN BOWYER CALDWELL, *J. P.*

CLERK'S OFFICE OF GREENBRIER COUNTY COURT,
September 11*th*, 1858.

This trust deed was this day presented in the office, and the execution thereof being duly certified, is admitted to record.

Teste: JOEL McPHERSON, *Cl'k.*

A copy. Teste: MARK L. SPOTTS, *Cl'k.*

Exhibit No. 10. *Filed with Original Bill.*

This deed, made this 18th day of April, 1861, between the White Sulphur Springs Company, of the county of Greenbrier, in the State of Virginia, of the first part, and Thomas Mathews, of the county of Greenbrier, in the State aforesaid, and Joseph J. Halsey, of the county of Orange, in the State aforesaid, parties of the second part, witnesseth: That whereas at a meeting of the stockholders of the White Sulphur Springs Company, held on the 22 day of February, 1861, the following preamble, resolutions, and orders were adopted, that is to say: Whereas
118 Jeremiah Morton, R. H. Dulany, A. T. Caperton, Ro. B. Bolling, R. W. Carter, and Philip St. Geo. Cocke, executed their bonds for the benefit of the company for sums amounting in the aggregate to $75,000, in consequence of which the following resolutions were passed at the meeting of the stockholders on the 16th day of January last, viz.: Resolved, That the president of the company execute to the said parties, the note of the company for the said sum, and also a deed of trust upon all of the unincumbered property, whether real or personal, of every description, to secure the said debt; and whereas some difficulty has arisen in negotiating said bonds on account of the size, and the parties to said bonds have agreed to execute other bonds in their stead, or instead of a portion of them, in sums of one thousand dollars: It is therefore resolved, unanimously, that, instead of the deed directed to be executed by said resolution, the president of this company is hereby directed to execute a deed of trust in proper form upon all the property of said company, real, personal, and mixed, and that he shall embrace in said deed of trust the coupon bonds now held by Ro. H. Maury, and the parties executing the bonds above mentioned, or the coupon bonds endorsed by them or either of them.

And it is further resolved, should any stockholder, holding the coupon bonds which he took as his *pro rata* portion, or who may have endorsed such bonds, desire to participate to that extent
119 in the security here provided, he may do so by uniting with the parties who may have executed these bonds aforesaid, provided that he does so on or before the 15th day of March next. It is also ordered that the president apply the net profits of each season, after the payment of interest, to the satisfaction of the bonds herein referred to. And it is further ordered, that the treasurer be directed to apply the first proceeds from the sale of the individual bonds aforesaid to the payment of the negotiable notes endorsed by Jeremiah Morton, A. T. Caperton, J. Prosser Tabb, and Philip St. George Cocke, to the amount of twenty-four thousand dollars, but he is not authorized to sell the same less than 94 cents on the dollar, unless otherwise directed [ordered] by the board of directors.

And whereas, in compliance and in accordance with the above-cited preamble, resolutions, and orders of the stockholders of the said White Sulphur Springs Company, and for the uses and pur-

poses, and upon the stipulated terms in said preamble, resolutions, and orders expressed and contained, the said Jeremiah Morton, A. T. Caperton, J. Prosser Tabb, Ro. B. Bolling, Rich'd H. Dulany, Philip St. Geo. Cocke, and Robert W. Carter, have jointly executed seventy-five bonds, each for the sum of one thousand dollars, and numbered from one to seventy-five, inclusive, dated on the 15th day of January, 1861, and payable two years after date, [January 15th 1863,] and have delivered the same to the treasurer of the White Sul-
120 phur Springs Company for the use and benefit of the said company; and whereas, in further accordance with the terms and stipulations of the above cited preamble, resolutions, and orders, and prior to the 15th day of March, 1861, the said Philip St. George Cocke, Ro. B. Bolling, J. Prosser Tabb, R. W. Carter, Rich'd H. Dulany, Jeremiah Morton, A. T. Caperton, and Ro. H. Maury, held or had endorsed certain of the coupon bonds, each for the sum of $500.00, dated, and issued by the said company, on the first day of January, 1860, and severally payable in from one to five years from date, the numbers and aggregate amounts of said bonds so held and endorsed being here particularly set forth, showing the several and joint liability and claim of the endorsers and parties above-named, and the precise bonds embraced in the terms of the said preamble, resolution, and orders. That is to say—

Coupon Bonds of said Company held or endorsed by Philip St. George Cocke.

Nos. one and two, due January 1st, 1861	$1,000 00
Nos. sixty-nine, seventy, and seventy-one, due January 1st, 1862	1,500 00
No. one hundred and seventen, one hundred and eighteen, and one hundred and nineteen, due January 1st, 1863	1,500 00
No. one hundred and sixty-nine, one hundred and seventy, and one hundred and seventy-one, due January 1st, 1864	1,500 00
No. two hundred and twenty, and two hundred and twenty-one, due Jan'y 1st, 1865	1,000 00
Making in all thirteen bonds, of the aggregate principal value of	$6,500 00

121 *Coupon Bonds of said Co. held or endorsed by Robert B. Bolling.*

No. 52, 53, 54, and 55, due January 1, 1862	$2,000 00
No. 100, 101, 102, due January 1, 1863	1,500 00
No. 149, 150, and 151, due January 1, 1864	1,500 00
No. 196, 197, and 198, due January 1, 1865	1,500 00
Making in all 13 bonds, of the aggregate principal value of	$6,500 00

Coupon Bonds of said Company held or endorsed by J. Prosser Tabb.

No. sixty-six, sixty-seven, and sixty-eight, due Jan. 1st, 1862	$1,500 00
No. one hundred and thirteen, one hundred and fourteen, and one hundred and fifteen, due Jan'y 1st, 1863	1,500 00
No. one hundred and sixty-three, one hundred and sixty-four, one hundred and sixty-five, and one hundred and sixty-six, due Jan'y 1st, 1864	2,000 00
No. two hundred and sixteen, two hundred and seventeen, and two hundred and eighteen, due Jan'y 1st, 1865	1,500 00
Making in all thirteen bonds, of the aggregate principal value of	$6,500 00

Coupon Bonds of said Company held or endorsed by Ro. W. Carter.

No. seventy-seven, seventy-eight, seventy-nine, and eighty, due Jan'y 1st, 1862	$2,000 00
No. one hundred and thirty-two, one hundred and thirty three, and one hundred and thirty-four, due Jan'y 1st, 1863	1,500 00
No. one hundred and eighty-five, one hundred and eighty-six, and one hundred and eighty-seven, due Jan'y 1st, 1864	1,500 00
No. two hundred and thirty-one, two hundred and thirty-two, and two hundred and thirty-three, due Jan. 1st, 1865	1,500 00
122 Making in all thirteen bonds, of the aggregate value of	$6,500 00

Coupon Bonds of said Company held or endorsed by Rich'd H. Dulaney.

No. seventy-two, seventy-three, seventy-four, seventy-five, and seventy-six, due Jan'y 1st, 1882	$2,500 00
No. one hundred and twenty-one, one hundred and twenty-two, one hundred and twenty-three, one hundred and twenty-four, and one hundred and twenty-five, due Jan'y 1st, 1863	3,000 00
No. one hundred and seventy-two, one hundred and seventy-three, one hundred and seventy-four, one hundred and seventy-five, and one hundred and seventy-six, due Jan. 1st, 1864	2,500 00
No. two hundred and twenty-two, two hundred and twenty-three, two hundred twenty-four, two hundred twenty-five, two hundred twenty-six, two hundred and twenty-seven, due Jan'y 1st, 1865	3,000 00
Making in all twenty-two bonds, of the aggregate principal value of	$11,000 00

Coupon Bonds of said Company held or endorsed by Jeremiah Morton.

No. one hundred and sixty-one, one hundred and sixty-two, one hundred and sixty-seven, one
123 hundred and sixty-eight, due Jan. 1st, 1864 ..... $2,000 00

No. two hundred and seven, two hundred and eight, two hundred and nine, and two hundred and nineteen, due Jan'y 1st, 1865 ..... 2,000 00

Making in all eight bonds, of the aggregate principal value of $4,000 00

Coupon Bonds of said Company held and endorsed by A. T. Caperton.

No. two hundred and ten, two hundred and eleven, two hundred and twelve, two hundred and thirteen, two hundred and fifteen, and two hundred and fourteen, due Jan'y 1st, 1865 ..... $3,000 00

Coupon Bonds of said Company held and endorsed by R. W. Carter and A. T. Caperton.

Nos. one hundred and seventy-eight, one hundred and seventy-nine, one hundred and eighty-eight, and one hundred and eighty-nine, due Jan'y 1st, 1864 .. $2,000 00

Nos. two hundred and twenty-nine, two hundred and thirty, two hundred and thirty-four, two hundred and thirty-five, two hundred and thirty-six, two hundred and thirty-seven, two hundred and thirty-eight, two hundred and thirty-nine, and two hundred and forty, due Jan'y 1st, 1865 ..... 4,500 00

Making in all thirteen bonds, of the aggregate principal value of $6,500 00

124 *Coupon Bonds of said Company held or endorsed by Rob't H. Maury, R. W. Carter, A. T. Caperton, and J. Morton.*

Nos. nine, ten, eleven, twelve, thirteen, fourteen, fifteen, sixteen, seventeen, eighteen, nineteen, twenty, twenty-one, twenty-two, twenty-three, twenty-four, twenty-five, twenty-six, twenty-seven, twenty-eight, in all twenty bonds, due Jan'y 1st, 1861 ..... $10,000 00

Coupon Bonds of said Company held or endorsed by Rob't H. Maury.

No. eighty-three, due Jan'y 1st, 1862 ..... $500 00

Nos. one hundred and twenty-seven, one hundred and twenty-eight, one hundred and twenty-nine, one hundred and thirty, and one hundred and thirty-one, due Jan. 1st, 1863 ..... 2,500 00

Nos. one hundred and eighty, one hundred and eighty-one, one hundred and eighty-two, one hundred and eighty-three, one hundred and eighty-four, due Jan'y 1st, 1864 ..... $2,500 00

Making in all eleven bonds, of the aggregate principal value of $5,500 00

And whereas no other parties holding coupon bonds of the said company have, prior to the limit in the above cited orders assigned, availed themselves of the offer of security therein contained; and whereas the said White Sulphur Springs Company, in accord-
125 ance with the stipulation in the above cited preamble, resolutions, and orders expressed, now by this deed propose and design to secure the payment of the seventy-five individual joint bonds, amounting in the aggregate to the sum of seventy-five thousand dollars; and also the payment of the one hundred and thirty-two coupon bonds, above described and set forth, and amounting in the aggregate to the sum of sixty-six thousand dollars. Now, therefore, this deed further witnesseth, that the said White Sulphur Springs Company, for and in consideration of the premises, do hereby grant, bargain, sell, alien, convey, under their covenant of general warranty of title hereby made, unto the said Thomas Mathews and Joseph J. Halsey, *the* personal representatives, heirs, and assigns, and *assigns*, all the property, real, personal, and mixed, belonging to the said White Sulphur Springs Company, embracing all the lands held and claimed by the said company, lying and being in the county of Greenbrier, containing about seven thousand acres, being the same lands on which the White Sulphur Springs are situated, for a more particular description of which reference is hereby made to the conveyances by Wm. H. Macfarland, trustee, to Jeremiah Morton and others, and by said Morton and others to said company, which said conveyances are of record in the office of the clerk of the county court of Greenbrier; also, the tract or parcel of land lying on the turnpike road, leading from the White Sulphur Springs to Covington, purchased
126 of Hoke, containing about 2,800 acres more or less; also all the hotel, cottage, and cabin furniture now in the possession of the said company at the springs, consisting in part of bedsteads, beds, mattresses, blankets, sheets, towels, carpets, tables, wardrobes, and chamber furniture generally; all the dining-room, parlor, and kitchen furniture, consisting in part of tables, spoons, knives and forks, crockery, and cooking utensils; all the horses, mules, oxen, cows, hogs, and sheep; all the carts and farming implements of every kind and description in possession and at *at* the said springs; also all the interest of the said company in the mercantile firm of Mathews, Mays, Mathews & Co., and all the rest and residue of the property of the said company of every sort and description not particularly described above. To have and to hold the said property,

real and personal, and every part and parcel thereof unto the said Thomas Mathews and Joseph J. Halsey, their personal representatives, heirs, and assigns, in trust, to secure the payment of the seventy-five bonds for the sum of $1,000, each executed by the said Jeremiah Morton, A. T. Caperton, J. Prosser Tabb, Ro. B. Bolling, Rich'd H. Dulany, Philip St. George Cocke, and R. W. Carter, on the 15th day of January, 1861, and payable two years after date, and which have been deposited for the use of the company as above, herein more fully stated; also to secure the payment of the one hundred and thirty-two coupon bonds of the aggregate prin-
127 cipal value of sixty-six thousand dollars; and further, fully to indemnify, save harmless, and secure from all loss and damage the said Jeremiah Morton, A. T. Caperton, J. Prosser Tabb, Rob't B. Bolling, Rich'd H. Dulaney, Philip St. George Cocke, and R. W. Carter, the obligors on the said bonds of January 15th, 1861, amounting to $75,000; and further, to indemnify, save harmless, and secure from all loss and damage, the said Philip St. George Cocke, Rob't B. Bolling, J. Prosser Tabb, R. W. Carter, Rich'd H. Dulany, Rob't H. Maury, Jeremiah Morton, and A. T. Caperton, as holders or endorsers of the 132 coupon bonds above herein described and set forth; the said parties severally to have equal and just protection and security under the provisions of this deed in proportion to their respective claims and liabilities for the said company, as above herein stated and expressed.

Witness the following signatures and seals.

[SEAL.] JOSHUA HUMPHREYS.

CITY OF RICHMOND, } *ss:*
State of Virg'a, }

I, ———, a justice of the peace for the city aforesaid, in the State of Virginia, do certify that the White Sulphur Springs Company, by Joshua Humphreys, its president, whose name and company seal are affixed to the writing above, bearing date on the 18th day of April, 1861, has acknowledged the same before me in
128 the city aforesaid.

Given under my hand this 25th day of April, 1861.

C. B. HILL, *J. P.*

CLERK'S OFFICE GREENBRIER COUNTY COURT, *May* 18, 1861.

This deed was this day presented in the office at 11 o'clock a. m., and the execution thereof being duly certified, is admitted to record.

Teste: JOEL McPHERSON, *Clk.*

A copy from the record.

Teste: M. L. SPOTTS, *Clk.*

Exhibit No. 11. *Filed with Original Bill.*

I, Henry Erskine, of Greenbrier county, do hereby make this, my last will and testament, in manner and form, to wit:

1st. I give and bequeath to my beloved wife, Agatha, the houses, lots, and appurtenances, embracing about two acres, whereon I now live; all my household and kitchen furniture; my riding carriage, with a pair of good carriage horses; the land I own north of Lewisburg, lying on both sides of the road leading to Johnston's old farm, now owned by Alexander Kearns, containing about forty acres, be the same, more or less; also about thirty acres of land, part purchased from the estate of John G. McClanachan, and part from the estate of John Dormon; part is cleared and in cultivation, the balance in woods; the following slaves: Jacob,
129 Toon, Alfred, Lydia, and her four youngest children, and eight thousand dollars, to her and her heirs, forever. The houses and lot on which the storehouse is situated on belongs to Agatha and myself jointly, being deeded to us by Agatha Stuart. Should I depart this life before Agatha, she may claim that property. I would prefer she should not do so, but if she should elect to take that property in place of the land on the Johnston road, and the land got from McClanachan and Dormon, she can do so.

2d. I give and bequeath to Sam'l Price, as trustee, for the use and benefit of my daughter, Elizabeth, the following slaves: Adam, Mary, and two children, Milly McElheny and child, Allen, Charlotte, and Hannah, and one-third of my estate, both real and personal, not otherwise devised, subject to a declaration of an account against Elizabeth and her husband—that is, the account to be brought into the estimate of my estate, so as to make an equal division.

3d. I give and bequeath to Thomas Mathews, as trustee, for the use and benefit of my daughter, Margaret, the slaves, Robert, Mariah, Solomon, Milly and child, Sarah, Davy, Betty, and Isabel, and one-third of estate, both real and personal, not otherwise devised, subject to a declaration of an account against Margaret and her husband, which account is to be taken into the estimate of my estate.

4th. I give and bequeath to Mason Mathews, as trustee,
130 or to hold in trust for the use and benefit of my daughter Jane the following slaves: Woodford, Sally, Martha, Old Billy and Becky, Allen, Billy and Bicky's son, Dover, John, Billy, Malinda, and Bartlett, and one-third of my estate, both real and personal, not otherwise devised; should Jane depart this life before she gets married, the slaves and other interest devised for her use and benefit to go into the trustees' hands appointed for Elizabeth and Margaret having charge of their interest, and to hold the same for them as directed by this will. Should Jane marry and leave no children, I desire that she have the privilege to devise one-half of her interest in the property I have devised for her use, the other half to go to the children of Elizabeth and Margaret.

5th. It is my wish, and I so direct that, good comfortable residences or houses be provided for each of my daughters to correspond somewhat to the devise made in trust for their use and benefit, they to have the use and benefit of the slaves devised, or such

as may be useful to them, the others to be hired out—the income to go to their support and use; the residue of the devises to my children's use after providing for them and their children the necessary comfortable support, schooling for the children, &c., to be paid into such interest-bearing funds as will produce an income, the interest to be collected annually, and reinvest if not needed for the support of my daughters and their children. After the death
131 of my daughters the estate hereby devised to go to their children, to be treated as hereby directed.

6th. In case of death or a refusal to act of either of the above-named trustees, I desire the ju[d]ge of the circuit superior court of law and chancery, wherever any of my children may reside, to appoint a trustee or trustees, and in this selection I desire a good, honest, judicious person to be appointed, requiring annually settlements.

7th. In case my daughters remove from Va., I still desire that the administration of the funds be confined to Va., as my confidence in the proper administration of the funds in Va. than any other State.

9th. Should either of my daughters depart this life, leaving infant heirs, I desire that the trustees named, or others that may be appointed to take charge of such part as may be due the infant heirs, and conduct it in the same way as directed as to my daughters until the infant heirs arrive at full age.

10th. If any of the slaves devised to my daughters use act in such a way as it might become necessary to dispose of them, I desire that they may be sold and others purchased, or the proceeds vested in interest-bearing funds.

11th. I do not wish the husbands of either of my daughters to be appointed trustees, or to be the guardians for the infant heirs, except Jane, she not yet being married, I leave it discretionary
132 with the court having the appointing power, to appoint her husband or not; if he is a good, judicious business man he may be appointed.

12th. If any of my daughters would desire to select any part of my real estate to hold the same in the hands of the trustee or trustees, they can do so.

13th. In making sales of any of my real estate, my executors, hereinafter named, are authorized to sell and convey the same, or to make any deed that may be necessary.

Lastly. I appoint Sam'l Price, Mason Mathews, and Thomas Mathews, executors of this my last will and testament, and they are authorized and empowered to appoint an agent or agents to settle up the business in Louisiana, or elsewhere, if necessary. My estate consists mostly of personal funds, and would require a bond of large amount; therefore, all I desire is that they may enter into a joint bond, without security, as I have full confidence in their honesty, and that they will do what is right. My estate, I do not think, will be difficult to settle; I therefore think 5 per cent. and the

usual charges on small estates is too much. The executors are likewise trustees. I desire, if it can be done, that a division of the funds be made, and as much as can be converted into interest bearing funds, and perhaps that can be done without changing much of the character of the debts, but this I leave to my execu-
133 tors. I wish all my just debts paid, and I do not desire a strict compliance with the law as to that. If my executors are of opinion as to the justness of any debt, that will be sufficient. If any suits of difficulty should arise, make a compromise on such terms as my executors may think right and just. I have made a mem'a of my estate in a book that can be referred to; it is an imperfect inventory, but may, to some extent, serve as a guide in settling my matters.

In testimony whereof, I have hereunto set my hand and seal, and published this as my last will and testament, revoking all other wills by me. All done in my own handwriting, that can easily be proven, this 11th day of Jan'y, in the year of our Lord 1847.

HENRY ERSKINE. [SEAL.]

Codicil to this Will.

Gustavus A. Crockett has sold to me three negroes, two men and one boy, to wit, Madison, Harold, and Isaac, and conveyed to me, in trust, for the use and benefit of his wife and family, his land, near Wythville, at five thousand five hundred dollars. I will to Samuel Price, in trust for Elizabeth C. Crockett's use and benefit, on the conditions as stated in the above will, the three negroes above named, and the land conveyed to me for the use and bene-
fit of the family, at the price of $7,000.00, and charge of
134 interest on this sum from this time; on the balance, as charged to Gustavus and Elizabeth, four thousand eight hundred and fifty dollars, no interest to be charged on that sum.

These two amounts to come out of Elizabeth's interest, as devised in my will.

Margaret and her husband are charged with two thousand five hundred dollars. On this I do not wish interest to be charged.

Given under under my hand and seal, this 14th day of January, 1847. HENRY ERSKINE. [SEAL.]

Greenbrier County Court. November Term, 1847.

A writing purporting to be the last will and testament of Henry Erskine, dec'd, with a codicil thereto, was produced in court by Samuel Price and Mason Mathews, two of the executors therein named, and there being no subscribing witness thereto, John A. North and Allen T. Caperton were sworn, and severally deposed that they are well acquainted with the testator's handwriting, and verily believe the said writing and the name thereto subscribed to be wholly written by the testator's own hand.

Whereupon the said writings were ordered to be recorded as the true last will and testament of the said Henry Erskine, dec'd.

And on the motion of Sam'l Price and Mason Mathews, two of the executors therein, who made oath thereto, certificate is
135 granted them for obtaining a probate of said will in due form—the testator not requiring security to be given, and liberty is reserved to the other executor named in said will to join in the probate when he shall think fit.

A copy. Teste: WM. C. WOODSON, *D. C.*

And at January term, 1848—

On the motion of Thomas Mathews, one of the executors named in the will of Henry Erskine, dec'd, heretofore proved, who took the oath of an executor and signed the bond entered into by the other executor named in said will, at the November term last of this court, thereupon certificate is granted him to be joined in the probate of said will.

Teste: W. C. WOODSON, *D. C.*

A copy. Teste: MARK L. SPOTTS, *C. G. C.*

The following are copies of decrees entered in the original cause of Gay *et al. vs.* White Sulphur Springs Co. *et al.*:

136 At a District Court of the United States for the District of West Virginia, held at Charleston, on the 28th day of April, 1876.

GAY and others
vs.
WHITE SULPHUR SPRINGS Co. and others. } In Chancery.

It is adjudged and ordered that the report of Commissioner Matthews, marked No. 1, and filed in open court on the 21st day of April, 1876, and the report of the same commissioner, marked No. 2, filed this day, to neither of which is there any exception, be confirmed.

2. It appearing from said Report No. 1 that there are creditors of the White Sulpher Springs Company who did not present their claims against said company to said commissioner, so that the same are not mentioned in the said report, it is further ordered that Commissioner Matthews do publish a notice in the Greenbrier Independent once a week, for four successive weeks, calling upon all creditors of said company who have not presented their claims and the evidence to sustain them, to do so, on or before some day to be designated in said notice, and at such place as he may therein designate. And said commissioner is directed to classify all such claims as may be so presented, according to their respective priorities, and make report thereof to the court.

3. And it further appearing from said report that some of the creditors of said company claim that if the assets of said company should turn out to be insufficient to discharge all the debts thereof, that then the holders of coupons, which have been severed and

transferred by the holders of the bonds from which they have been so severed, are entitled to priority over the bonds and coupons not transferred, such coupons, however, being entitled to priority according to the dates of their maturity. Upon which claim
137 the commissioner has expressed no opinion, but submitted the same to the consideration of the court. And the court, having considered the same, is of opinion, and doth declare that the proposition set forth by said creditors, as above stated, is equitable and just.

4. And the court, having confirmed Report No. 2, doth approve, ratify, and confirm the contract of lease, made by Commissioner Matthews with Geo. L. Peyton & Co., as set forth in said report, for the term of two years, commencing November 1st, 1875, and ending November 1st, 1877.

And the court doth further order that said Peyton & Co. shall have the privilege of expending under the supervision of Commissioner Matthews, as provided for in said contract, for and during the first year of the said lease, all the money which, under said contract, they have the right to expend, in repairs and improvements, &c., during the two years, provided that all the expenditures made the first year over and above one-fourth of the annual rent, shall not be deducted out of the first year's rent, and not less than one-fourth of said annual rent shall be so expended the first year.

5. And the court, approving, doth also ratify and confirm the contract mentioned by Commissioner Matthews, in his Report No. 2, as made by him, with said Geo. L. Peyton & Co., in respect to the erection of a hotel, at the depot, on the Chesapeake and Ohio Railroad, at the White Sulphur Springs.

6. Upon hearing the petition of Geo. L. Peyton & Co., filed this day, together with exhibits accompanying the same, it is further ordered and decreed that Commissioner Matthews do ascertain and report what sums of money, if any, that said Geo. L. Peyton & Co. expended in repairs of the White Sulpher Springs, in the year 1875, over and above the sum of 5,000 dollars, which it was agreed
138 that they should expend out of the rent for that year, and whether such expenditure, in excess of said sum, was necessary for the preservation of said property from rapid deterioration and decay, and whether said expenditures were judiciously made, and at resonable prices.

7. And it further appearing by a special statement of Commissioner Matthews, marked No. 3, that the holders of the Singleton debts insist that they are entitled to the interest on the accrued interest upon their debt, amounting to $36,000, on none of which have they received or been allowed interest for seven years, while the commissioner has allowed interest upon the accumulated interest of other debts represented by coupons, over which the said Singleton debts have priority, and that said sum of $36,000 should be made an interest-bearing fund from this day, the court is of opinion and doth order that, in view of the fact that the property conveyed to

secure the said Singleton debts is confessedly ample, if sold, to pay the same principal and interest, and that, in the interest of the holders of subsequent liens, the said sale has been, from time to time, postponed, and still is postponed, the said accumulated interest of $36,000 should constitute a principal sum, bearing interest from this date.

8. And it is further ordered that the said Commissioner Matthews do proceed to collect the rent reserved in the contract of lease, in the Report No. 2 mentioned, as the several instalments thereof fall due, and that when so collected do distribute the same in the same manner as he was directed to distribute the rent of 1875, by a previous order of this court, and make report thereof to the court.

9. It is further ordered and decreed that the claim of George L. Peyton & Company mentioned in the last page of Report
139 No. 1, hereinbefore mentioned, that they are entitled to a lien superior to all others on the property of the White Sulphur Springs Company for the sum of $3,741.41c., with interest on $2,000, part thereof, from the 27th day of July, 1871, and on $572.77c., another part thereof, from the 26th day of August, 1871, and on $1,168.64c., the residue thereof, from the 30th day of August, 1871, which said sums the said Peyton & Co. allege were paid by them for taxes assessed against the said White Sulphur Springs Company prior to their becoming the lessees of the property of said company, be referred to Commissioner Matthews, who is directed to examine the same, receive any evidence which may be submitted to him in respect thereto, and ascertain whether said sum, with interest thereon as aforesaid, or any part thereof, does properly constitute a lien upon said property, and, if so, whether such lien is entitled to priority over all or any other liens thereon, and make report thereof to this court.

But said commissioner shall give notice of the time and place of making such examination and inquiry by publishing in the Greenbrier Independent once a week for four successive weeks, which publication, as well as that hereinbefore ordered, shall be equivalent to personal service upon all the parties or any of them.

10. This order is entered with the consent of the parties represented by the following attorneys, as appears by their endorsement on the original order, to wit: Joseph Bryan, Samuel Price, H. H. Marshall, and A. C. Snyder.

140 At a District Court of the United States for the District of West Virginia, holden at Charleston, in said District, on the 5th day of May, A. D. 1877.

C. S. GAY and others
vs.
THE WHITE SULPHUR SPRINGS COMPANY and others. } In Chancery.

This cause came on this day to be further heard upon the papers formerly read, and upon the report of the commissioner, Henry M.

Mathews, accompanied with a report of a topographical survey and plat, made under an order in this cause entered on the 19th of January last, and was argued by counsel. On consideration whereof, the court hereby orders the said report, with the survey and plat aforesaid, to be filed among the papers of this cause, to be hereafter considered and acted on.

And it appearing to the court that it is now for the interest of all the parties to this suit, and of all others interested in the subject involved therein, and there being now no objection, except on the part of the White Sulphur Springs Company, that there shall be a sale of the property known as the White Sulphur Springs property, and an application of proceeds of said sale among the parties entitled thereto, according to their legal rights and priorities: It is therefore adjudged, ordered, and decreed that Henry M. Mathews, John Echols, William A. Quarrier, A. C. Snyder, W. W. Gordon, and Jasper Y. Moore, any two or more of whom may act, who are hereby appointed commissioners for that purpose, do, commencing on the first Tuesday of August, 1878, and continuing, on consecutive days, as long as may be necessary, after having given at least six months' notice, in some newspaper published in the city of Richmond, Va., and in such other newspapers as they may deem judicious, of the time, place, and terms of sale, sell, on the premises, at public auction, to the highest bidder or bidders, the White Sulphur Springs property, as the same is described in the papers of this cause, consisting of the White Sulphur Springs property proper, which comprises about 7,000 acres, be the same, however, more or less, and another tract of land, consisting of about 2,800 acres, the last being the land formerly owned by one —— Hoke—requiring of the purchaser, or purchasers, the payment of ten per cent. of the purchase money in cash, at the time of sale, and for the residue, giving a credit of one, two, three, four, and five years, in equal instalments, with interest thereon from day of sale, and requiring good personal security for the payment of the first of said annual instalments, and retaining the title as further security for all of said deferred instalments; or in lieu of said personal security required of the purchaser, or purchasers, for the first deferred instalment of purchase money as aforesaid, the said commissioners are authorized to receive from any purchaser, or purchasers, as collateral security therefor, any evidences of debts proved in this cause, and which it may appear to said commissioners will certainly be paid from the proceeds of said sale, and which may belong to said purchaser, or purchasers, offering the same as collateral security; the just and fair amount of which collaterals shall be determined by said commissioners. And said commissioners are directed to cause said property to be laid off into lots and parcels, with such rights, privileges, and restrictions to be attached to each lot or parcel, in such manner as may seem to them most judicious. But the occupants, their families, and guests shall have the privilege to use the water of the White Sulphur Springs for drinking purposes. And they

are further directed to cause a plat of said lots and parcels to be made for exhibition, on the day or days of sale. And said commissioners are hereby directed to proceed as soon as practicable to cause the sub-divisions hereinbefore mentioned to be made, and to report the same to the court at the next term. And in making the sale hereinbefore directed, they, or those of them who may act, shall offer the said property at public auction, in two ways, as follows, viz., by offering the same in the lots and parcels into which they may have caused the same to be sub-divided, and by offering the same as a whole, so as to ascertain by which method they can realize the largest amount of money out of said property. But in making a sale as a whole, it is further ordered that the commissioners shall not include in such sale 2,800 acres of land, or thereabouts, known as the Hoke land, but they shall sell the said Hoke land separately, inasmuch as there are creditors having specific liens upon said Hoke land. And the said commissioners are also directed not to sell the lot or parcel of land now held and occupied by Wm. B. Calwell, except subject to the life estate of the said Calwell therein.

And it is further ordered that said commissioners shall, at the time of offering said lots and parcels, also offer the exclusive privilege of bottling, shipping, and selling the mineral waters on said property, from the first day of October to the first day of June, in each year, perpetually, subject to a sale of the property as a whole, and subject to such restrictions as the commissioners may deem necessary. And said commissioners are also directed to offer, at the same time, for sale at public auction, the exclusive right to keep one or more bathing houses for "baths" of said White Sulphur Spring water, with the undertaking on the part of the purchaser or purchasers of such right to keep said baths open for persons occupying any part of said White Sulphur Springs property at the same rate of compensatian.

And said commissioners are authorized to take to their assistance in making the subdivision of said property, and the plat aforesaid, some competent surveyor, and they are directed to make
141 report of all their proceedings under this order to the court, and file with said report the plat aforesaid, and all the bonds they may take from the purchasers. And said commissioners are further directed, out of any cash payments that may be made to them, to pay the costs of advertising and surveyor's and auctioneer's fees. But said commissioners shall not proceed to make sale of said property under this decree, until they, or two or more of them, or some one for them, shall enter into bond with good security, to be approved by the judge of this court, in the penalty of one hundred and twenty thousand dollars, payable to the President of the United States, and conditioned for the faithful discharge of the duties of their office or trust.

And it is further ordered that the purchaser or purchasers of the said property shall be entitled to the possession thereof on the first day of December next after the sale thereof shall be confirmed by

the court, or if said sale shall not be confirmed until after the first day of December next, after said sale, then possession is to be given within thirty days after such confirmation. And it appearing to the court that since the last hearing the hotel building erected by Geo. L. Peyton & Co., at the depot of the Chesapeake and Ohio Railroad Company, at the White Sulphur Springs, in accordance with the terms of a decree rendered in this cause on the twentieth day of August, 1875, and the documents referred to therein, has been destroyed by fire, and that by reason thereof a heavy loss has been incurred by said Geo. L. Peyton & Co., and it also appearing that the term of five years, mentioned in said decree, will expire on the first day of November, 1880, so that less than four years of said term yet remain, and that unless an hotel is re-erected at said depot, certain rights and privileges belonging to said White Sulphur Springs Company will be lost; and it also appearing to the court unreasonable to require said Geo. L. Peyton & Co. to rebuild said hotel, to be used by them only for the remainder of said term of five years, even if the court had the right so to require, it is ordered that said Geo. L. Peyton & Co. shall have said term extended till the first day of July, 1882, and the said Geo. L. Peyton & Co. shall proceed to erect an hotel at said depot, on or near the site of that which has been destroyed, on the terms and conditions, and in the manner set forth in said decree of August 20, 1875, and the documents referred to therein, except that the hotel so to be erected shall cost not less than ten thousand dollars, nor more than forty thousand dollars, and shall be commenced without delay, and completed by the first day of July, 1878, and hold the same, until the first day of July, 1882, as aforesaid, instead of the first of November, 1880.

And it is further ordered that said commissioners of sale do also sell the rights and privileges of the said White Sulphur Springs Company in and to the hotel to be built under this order by G. L. Peyton & Co., including the right to take said hotel on and after July 1, 1882, at valuation as provided by the decree of the twentieth of August, 1875, and said documents hereinbefore referred to, and to hold and perpetually enjoy the same, together with the same rights and privileges granted to said G. L. Peyton & Co. during their term.

And it is further ordered, that the lease of the said White Sulphur Springs property, made to said Geo. L. Peyton & Co. for the years 1876 and 1877, the said firm being composed of Geo. L. Peyton, H. M. Bell, R. H. Catlett, J. Fred Effinger, and M. Erskine Miller, shall continue until after the sale of said property as hereinbefore provided. The said G. L. Peyton being present, and for himself and his partners agreeing to accept said lease, upon the same terms and conditions as the lease for the two years aforesaid, except that the terms of said lease are modified to this extent and no further, that if the large hotel building at the White Sulphur Springs shall be destroyed by fire, tempest, or other causality, or shall be so injured by fire, tempest, or other causality, as to render it, or the greater part

thereof, unfit for the uses for which it was built, that then the rent of the property shall be diminished by such an amount as may be fixed upon and determined by arbitrators, one selected by Commissioner Mathews, and the other by Geo. L. Peyton & Co., and their umpire, whose award shall be final and conclusive.

And it is further ordered, that Commissioner Henry M. Mathews do proceed to take bonds or notes with good security, as he did under the lease for the two years aforesaid, and to collect the same when due, and to disburse the money collected, as he has heretofore done, and make report of his proceedings under this order to the court, from time to time.

The court doth further order that said H. M. Mathews, commissioner, do make inquiry and report to this court, whether any, and if any, what fees should be paid out of the fund in this cause to W. W. Gordon and Isaac H. Carrington, attorneys for the White Sulphur Springs Company, and to Wm. A. Quarrier, attorney for plaintiffs, and also whether any, and if any, what amount should be paid to A. N. Welford, President of the White Sulphur Springs Company, on account of his expenses and salary, and what fees, if any, should be paid out of said fund to any other counsel in this cause.

A true copy from the records.

Teste:

_____,
Clerk District Court U. S., Dist. W. Va.

142 In the District Court of the United States for the District of West Virginia, at Charleston, on the 13th day of October, 1879. In Vacation.

CHARLES S. GAY and others.
vs.
WHITE SULPHUR SPRINGS CO. and others. } In Chancery.

This day Special Commissioners Wm. A. Quarrier, W. W. Gordon, Henry M. Mathews, A. C. Snyder, and Jasper Y. Moore returned their report of sale made by them of the White Sulphur Springs property under decrees rendered in this cause, which report is filed.

And on the same day W. A. Stewart, one of the creditors of the White Sulphur Springs Company, tendered exceptions in writing to said report, bearing date October 2d, 1879, which exceptions are filed.

And on the same day Samuel Price, Esq., attorney for the children of Mrs. E. E. Crockett, Samuel Price, their trustee, and Wm. A. Stewart, creditor of said company, tendered exceptions in writing to said report of sale, dated October 9th, 1879, which exceptions are also filed.

Teste:

JASPER Y. MOORE,
Clerk Dist. Ct. U. S., Dist. W. V.

143 At a District Court of the United States for the District of of West Virginia, held at Charleston, on the 19th day of November, 1879.

C. S. GAY and *als.*
vs.
THE WHITE SUL. SPRINGS CO. *et als.* } In Chancery.

This day Margaret L. Gay and William A. Stuart, by their counsel, tendered their exceptions to the report of the commissioners of sale, filed on the 13th of October, 1879, which are ordered to be filed, and thereupon the cause came on to be heard further at this term, and was argued by counsel.

Upon consideration thereof, and of the matters stated in said exceptions, and of the statement made in open court by the purchaser, Alex'r F. Mathews, to the effect that whilst he is willing and prefers to have said sale confirmed, he is unwilling to insist upon such confirmation in opposition to the wishes of the creditors, the court being of opinion that said sale should not be confirmed.

It is therefore adjudged, ordered, and decreed that the sale made by said commissioners to said Alexander F. Mathews be, and the same is hereby, set aside and annulled.

And said commissioners are directed to surrender to said purchaser the bonds executed by him, and to repay to him the cash paid in pursuance of the decree of sale.

And it is further adjudged, ordered, and decreed that the commissioners of sale do again proceed to offer said property for sale upon the terms and in pursuance of the provisions of the decree rendered herein on the 5th day of May, 1877, as modified by
144 the decree of the 9th day of November, 1878, except that in case a sale of said property be not effected privately on or before the 31st day of March, 1880, said commissioners do, after having given notice of the time, place and terms of sale for at least two months, as prescribed in said first-named decree, commence such sale on the premises on Wednesday, the 31st day of March, 1880, and continue the same on consecutive days as long as may be necessary.

And said commissioners will report any sale they may effect under this decree for confirmation by this court at its next term; and in any event report their proceedings in the premises.

And the court being of opinion that the sixth exception filed to the report of sale by the plaintiff, Margaret L. Gay, was well taken, would, in order to avoid objection to any future sale on this ground, direct that the 200 acres of land referred to in said exception, which is covered by both of the deeds executed to secure the Singleton and the Erskine bonds be sold separately, but it being conceded by all parties by their counsel, in open court, that said 200-acre tract embraces the White Sulphur Springs and the valuable improvements of the White Sulphur Springs property; and that in any sale of the

entire property which could be confirmed by the court the value of the sale money of said 200-acre tract, must exceed the amount necessary to discharge the Singleton trust deed.

It is thereupon, and by consent of parties, adjudged, ordered, and decreed that said commissioners proceed to sell said property as heretofore directed, and as if the 7,000 acres, more or less, described in said decree of May 5th, 1877, as constituting "the White Sulphur Springs property proper," were covered by the Singleton trust deed. The tract known as the Hoke tract, containing 2,800 acres, more or less, to be sold separately, as heretofore directed.

145 But this decree shall be without prejudice to the right of those claiming under the Erskine mortgage, if any they have, to insist (if need be to protect them from loss) on a sale of the 750 acres covered by the Singleton trust deed, but not embraced by this decree of sale.

But the said commissioners, in making any sale under this decree, are directed to exempt therefrom the lot of land, heretofore sold to the Right Reverend George W. Peterkin, under a former decree in this cause.

And said commissioners are further directed to exempt and reserve from such sale the life estate of Wm. B. Calwell in the two acres of land upon which he now resides; the lease of George L. Peyton & Co., in the premises at the depot, where the Peyton house stood; the family cemetery of the former proprietors, containing about one-fourth of an acre; and the lot heretofore conveyed by the White Sulphur —— Company to Jeremiah Morton and others for the Methodist Church by deed dated October 29th 1859, a copy of which is filed among the papers in this cause; and also the house and improvements on the lot occupied by E. F. Wicker, and put thereon by said Wicker, under an agreement executed by Wm. B. Calwell, president, &c., on the 10th day of January, 1874, as shown by a contract in writing, marked "W. B. C.," herewith filed, the privilege being reserved to said Wicker to reserve said house and improvements from said lot in case there should be a sale of the premises as aforesaid.

At a District Court of the United States, for the District of West Virginia, held at Charleston, on the 4th day of May, 1880.

C. S. Gay, &c., Complainant,
vs.
The White Sulphur Springs Company and others, Defendants. } In Chancery.

146 This cause this day came on to be further heard upon the papers formerly read, and upon the report of Jasper Y. Moore, John Echols, Wm. A. Quarrier, A. C. Snyder, and Henry M. Mathews, commissioners of sale, dated 31st day of March, 1880, and this day filed, to which report there is no exception, and was argued by counsel. On consideration whereof the court, approving the action of

said commissioners, and the sales made by them to Wm. A. Stuart of the White Sulphur Springs property, subject to the exceptions and reservations set forth in the decree of 19th November, 1879, at the price of three hundred and forty thousand dollars, and of the Hoke tract of land, at the price of five hundred dollars, as set forth in their said report, doth ratify and confirm said sales, and said report, and doth order and decree that the purchaser, Wm. A. Stuart, be at once put in full possession and use of said property, the title thereto being retained by the court as security for the payment of the purchase money. And the court doth further order that the commissioners of sale proceed to collect from the said Wm. A. Stuart the cash payment of ten per cent. upon the aggregate of purchasr money, and apply so much thereof as may be necessary to the payment of the costs and expenses of this suit, including their own compensation as commissioners of sale, which compensation the court hereby fixes at the sum of six thousand dollars, which is to be equally
147 divided among all of the commissioners appointed by the decree of 5th May, 1877, all of them, in fact, having acted and rendered full service as such commissioners, altho[ugh] from accidental circumstances the names of all are not signed to the report which is confirmed by this decree; and including the further sum of two hundred and fifty dollars to be paid to Commissioner H. M. Mathews; and the further sum of two hundred and fifty dollars to be paid to Commissioner Jasper Y. Moore for the expenses, &c., of the trips made by them to New York with a view of effecting a sale; and any surplus that may remain after the payment of said costs and expenses, they shall apply towards the satisfaction of the Singleton mortgage.

And this court will hereafter make such orders as may be proper for the collection of the deferred installments of the purchase money and the distribution of the same among the parties to this suit, according to their respective rights and interests.

The court doth reserve for further consideration whether any, and if any, what compensation shall be allowed to the counsel of the White Sulphur Springs Company.

148 UNITED STATES OF AMERICA, }
District of West Virginia, } *ss.*:

I, Jasper Y. Moore, clerk of the district court of the United States for the district of West Virginia, do certify that the foregoing is a true transcript of the record and proceedings of the bill of review and proceedings thereon tendered and rejected in the chancery cause of C. S. Gay *et al.* against The White Sulphur Springs Company and others, depending in the district court of the United States for the district of West Virginia, at Charleston, now of record and on file in my office.

In testimony whereof, I hereto set my hand and the seal of said

court, at Charleston, this 16th day of September, A. D. 1881, and in the 106th year of the Independence of the United States of America.

[SEAL.] JASPER Y. MOORE,
Clerk D. C. U. S., D. W. V.

Clerk's fee for making up this record, $53.37.

Endorsed on cover: West Virginia D. C. U. S. No. 335. James M. Nickle, in his own right, and as administrator of James Nickle, dsceased, and of Isaac Nickle, deceased, appellant, *vs.* William A. Stuart *et al.* Filed 7th October, 1881.

111-776

111-776

SUPREME COURT

of the

UNITED STATES.

J. M. NICKEL, Appellant,
vs
W. A. STUART and Others, Appellees.

Brief for Appellant.

J. W. DAVIS and T. B. SWANN,
Attorneys for Appellant.

CHARLESTON:
THE EVENING CALL PRINT.
1884.

IN THE

SUPREME COURT

OF THE

UNITED STATES.

J. M. NICKEL, *Appellant*,

vs.

W. A. STUART, *Appellee*.

BRIEF FOR APPELLANT.

In 1868, C. S. Gay and M. S., his wife, and other citizens of Virginia, filed their Bill in the District Court of the United States at Charleston, West Virginia, against the White Sulphur Springs Company, and others. The object of the Bill was to enforce liens against the property of the said Springs Company. All the other parties defendants were incidentally parties as creditors of said Company. Among the defendants to that Bill was J. M. Nickel, in his own right and Administrator of J. & J. Nickel, deceased. J. M. Nickel, in his own right and as administrator

of J. & J. Nickel, held large trust on said Springs property. The Bill was filed by citizens of Virginia: It charges that the White Sulphur Spring Company was a corporation doing business and having its principal office in West Virginia; that it was a corporation created by the State of Virginia. Print. 5.

That on the 3rd of March, 1836, J. Caldwell and Polly his wife, F. Bedford and Elizabeth his wife, executed a trust on nine hundred and fifty acres of land, on which the Springs are, to A. Stevenson, F. B. Miller, J. T. Brown and James McFarland, to secure large sums of money to R. Singleton, of South Carolina; J. Tabb, J. V. Wilcox and J. McFarland, of Virginia, and the banks of Virginia, at Richmond, Virginia.

That on the 3rd of November, 1841, J. & P. Caldwell, F. Bedford and E. Dopeland conveyed to M. Matthews and J. A. Crockett 950, 1,000, 5,000 and 800 acres of land, in trust, to secure large debts to H. Erskine.

That on the 10th of October, 1842, J. Caldwell and the other owners of this land, conveyed those lands to William Cary and J. McPherson, in trust, to secure large debts to J. Nickel, and to J. & J. Nickel, and others.

That on the 22nd of November, 1853, J. B. Caldwell and others conveyed said lands to W. H. McFarland, in trust that he should sell the same, and after retaining 10 per cent. commission, pay all debts secured on said lands.

That on the 4th of May, 1857, W. H McFarland and W. B. Caldwell conveyed the said lands to J. Morton, M. F. Maury, A. T. Caperton, R. H. Maury, A. K. Philips, A. J. Warren, D. Giford, J. Hunter and J. N. Slaughter.

That on the 1st of May, 1857, J. Morton, M. F. Maury and the other last grantees conveyed said lands to the White Sul phur Springs Company, chartered by the Legislature of Virginia. Print. 5.

That on the 15th day of October, 1857, said Company executed a trust on said lands to P. R Gratton, John Echols and R. F. Dennis, to secure all of the foregoing creditors—all the aforesaid creditors were to retain their priorty of liens. Here

all the creditors are named, including the debts due J. & J. Nickel aforesaid; afterward said Company executed several other trusts on said land. The complainants were the heirs of H. Erskine, and represented that debt in part.

"That the creditors who have liens on the estate sought to be subjected to sale, are exceeding numerous.

"That a very large number of them reside outside of the jurisdiction of this Court, and by the manner these complainants have sued, all the creditors have a right by petition to be made parties to this cause. If they be citizens of West Virginia, parties defendants, if citizens of other States parties plaintiffs. . . They are advised they are not bound to make the interested non-resident parties defendants to this suit. That T. B. Miller, one of the defendants, is a resident of Virginia." Print. 7.

After there had been a final decree of sale and confirmation of sale of all these lands under the suit of Gay against the White Sulphur Spring Company, J. M. Nickel, in his own right and as administrator of J. & J. Nickel, tendered his Bill of Review to said decree, which the Honorable Judge of the District Court for the District of West Virginia, refused to allow to be filed, and from that refusal this appeal was taken. The Bill of Review copied into itself the Bill of Gay against the White Sulphur Spring Company, and all proceedings under it, and there stated said cause of Gay against the White Sulphur Spring Company. That under his petition, which is set out in full, the Court held J. McPherson entitled to hold the interest of Bedford and wife and Copeland and wife in the nine hundred and fifty acre tract, to the prejudice of the trust deeds on same. Print. 19.

The lands were sold under the decree, and A. T. Matthews became the purchaser at $300,000. W. A. Stuart resisted the confirmation of this sale and filed his affidavit, in which he says: Long before the institution of the Gay suit he was a large creditor of said Springs Company; that he owns or

control the Singleton trust of $120,000; intermediate judgement $25,000; of the Erskine trust over $40,000; and of the trust of 1842, $160,000, in all $345,000. That he had no fear the Court would confirm a bid under $400,000 to $600,000. Print. 9, 10, 16.

This sale of Matthews was set aside, and under a second sale W. A. Stuart became the purchaser at $340,000, and the sale to him was confirmed. The Bill of Review charges that at the time the Gay Bill was filed the White Sulphur Springs Company was a corporation of Virginia and not of West Virginia. It was chartered by act of the Legislature of Virginia, and held its principal office at Richmond, Va. Print. 5. That at that time, W. A. Stuart was, and all his life had been, and still is a citizen of Virginia, as also the trustee F. B. Miller; and the other trustees named in sundry trusts, were citizens of Virginia, and a large number of other enumerated creditors were citizens of Virginia at that time. That if the necessary parties to the suit had been made parties defendants of Record, it would have ousted the jurisdiction of the Court, and no proper Bill could be framed in the United States Court in the cause of Gay. That the United States Court had no jurisdiction of the Gay suit, and that any sale made of the property in that suit is void. That the legal title remains in the several grantees named in the several deeds not parties to the Record. That if Gay had perfected his bill with proper parties he would have put himself out of Court.

That the property brought $340,000, and was worth $1,000,000 at that day. That it was sold under a cloud upon the title, which destroyed its value in market. The purchaser did not get the legal title.

That Stuart had confederates, and in some instances improper confederates, in making the purchase. That he held positions of trust which forbid his purchasing the land without an order of the Court. Print. 9 10, 12, 16, 17. Besides being a creditor himself—he acted as agent for other large creditors at the sale. (See the affidavit of William A. Stuart.) Print. 16. The Bill calls for many discoveries,

It asks that that part of the decree which gives a part of the trust subject to J. McPherson be reviewed. The commissioners of sale never gave the bond for $120,000 required by the decree of sale. That for these reasons the property failed to bring its value. That after the sale was reported to Court, and some creditors were dissatisfied with the sale; W. A. Stuart quieted them in an improper manner. The Bill charges that these acts were frauds. That it was a fraud in W. A. Stuart to purchase, and to make combinations of purchasers. That it was a fraud to buy off dissatisfied creditors. That the inadequacy of price is gross.—Print. 11, 12, 13, 14.

The Court is asked to review all these matters and to dismiss the Gay suit for want of jurisdiction. Print. 15.

It is suggested that the following questions of law arise upon the above facts:

An original Bill will not lie to correct errors in another suit.

A Bill of Review is the proper remedy to have errors revised for want of parties and jurisdiction. Whiting against Bank of United States; 13 Pet. 6; Rorer 236 section 556; 6 B. M. 274; 11 Wal. 581.

W. A. Stuart's affidavit—Print 16.—shows he was agent for other creditors, and standing in that relation, he could not purchase without the leave of Court first had therefor. Michoud vs. Girrod, and others, 4th H. 555; Brooks vs. B. & West, 16 West Virginia, 58.

When it appears by the Bill that certain indispensable parties are not made parties, the Bill is bad on demurer and should be dismissed. Goodman vs. Niblank, 12 Otto. 563, and cases there cited; 15 How. 415; 19 How. 113; 17 How. 145; 15 How., 246.

It is apparent upon the face of the Bill that very many necessary parties to the suit of Gay, could not be made parties without ousting the jurisdiction of the Court. Shields vs. Barrow, 17 H. 130; Barney vs. Baltimore, 6 Wal. 280; Clear Water vs. Meredith et al.: 21 How. 489. Print. 10, 11, 12.

Every thing in the Bill of Review is taken as true, and it now stands as a special plea or demurrer to the Bill of Gay against the White Sulphur Spring Company.

The allegation in Gay's Bill that the White Sulphur Spring Company did business, and had its principal office in the state of West Virginia, is not equivalent to allegation of citizenship. The Bill upon its face shows that the said Company was chartered by the Legislature of Virginia. Print. 5.

All the complainants, and W. A. Stuart, Tabb, McFarland, Brown, Wilcox, The Bank of Virginia, The Farmer's Bank of Virginia, T. B. Miller, and other trustees named were citizens of the State of Virginia, as well as the White Sulphur Springs Company.

If the pleader had developed his case, and made parties the persons named in his Bill, he would have put himself out of Court. The tacit acquiessence of some persons to taking the accounts, who could not be made defendants, cannot give jurisdiction, because they could not be sued. Curtis' Jurisdiction U. S. Court, 136—9—112—113; 2 Pet. 136—556.

It was the duty of the pleader to state the citizenship of all the persons named in his bill, who were therein shown to be proper parties to the suit. Godfrey vs. Terry, 7 Otto, 171.

The citizenship and not the residence must be shown by the Record. Robinson vs Cruse, 7 Otto, 646.

Indispensable parties are omitted, whose interests cannot be severed from those before the Court. Horne vs. Lockhart et al, 17 Wal, 570.

There is no sufficient charge in the Bill of Gay against the White Sulphur Spring Company, that said Co. is a citizen of West Virginia. Mantelet vs. Maury, 4 Cr., 46; 10 Wal. 328; 17 H., 47; 14 H., 327; 11 Wal., 581.

Stuart, the purchaser was agent at the sale, for some of the creditors, suppose he had been for all? 13 Ves., 94—4; 4 Kent. 438; 1 Rorer, p. 237; Hudson vs. Putney et al 16 West Va.; 4 How., 557.

A corporation has but one legal residence. Reporter, 2nd

March, 1881. p. 299; 13 Pet., 520; 14 Do., 122; 1 Blank, 286.

Stuart took no order of Court allowing him to bid at sale. 4 H., 557—8. 13 Met., 231. 8 Gro., 236. 1 Inda., 565.

Trustees cannot always be dispensed with as parties. 11 Wal.. 177,

When a Court of law will arrest a judgment for error, &c., a Court of Chancery will sustain bill of review.

When it appears proper persons were intentionally omitted, jurisdiction ousted. 14 Wal., 252.

W. A. Stuart, the purchaser. could not make terms with some dissatisfied creditors and pay them, more than they would receive under the sale, for not resisting the confirmation of sale. Print. 13.

Purchaser bound to look to regularity of the proceedings. 1 Wal., 627; 12 H., 197; 2 H. 319; 10 Pet., 449.

A mortgage sale will be set aside on Bill of Review, if mortgagor die, and the Bill is not reviewed, and the heirs made parties. 6 Grat., 320; Rorer, J. S., 236—section 556.

It was error to reserve certain life interests in the lands to W. B. Caldwell in the decree of sale: incompatible with the terms of the decree.

It was error to order another hotel to be built out of funds in the hands of the Court in the room of the house burnt down, and to extend the lease of G. L. Peyton.

The Commissioner did not give the $120,000 bond. Blackwell's Tax Titles, 444—445; Note, 446—7—8—9.

Agents cannot purchase. 2 Rob. Virginia Reports, 296 13 Vesey, 94,

An order of account before a master does not make parties, &c. Hook vs. Payne. 14 Wal.. 252.

Judicial sales when there was no jurisdiction may be set aside collaterally. 11 Wal.. 581; Do., 172; Shields vs. Barrow, 17 How, 141. 8 H. 611.

Of many of the parties there is no allegation of citizenship. 10 Wal.. 331; 11 Wal., 581. Do., 172.

The Bill of Review as to jurisdiction is a plea in abatement. 16 H., 104 4 Cranch, 421. 6 Wal. 174. 12 Wall. 130.

The fact that trustees and such persons are beyond jurisdiction, no excuse for not makng them parties. 11 Wal. 172. Thompson vs. Railroad Co., 6 Wal. 134. Knapp vs. Railroad Co. 20 Wal., 117. 3 Otto 150. 19 Howard, 113. 6 Wal., 280. All acts performed without jurisdiction are void. 8 Cr. 9, 12 Wal., 130. 1 Pet. 328. 1 Wal. 81.

The White Sulphur Springs is not a joint stock company, but a corporation. 10 Wal. 566. Dc. 553.

Want of jurisdiction ground for bill of Review, 4 M. C. L. 1. 20. Am. Dec. 158, 16 Howard 104.

A corporation can have no legal existence beyond the bounds of the sovereignty by which it is created. 1 Black, 286, and the bill in the Gay suit shows White Sulphur Springs Company was a Virginia corporation, incorporated by the act of the Legislatureof Virginia. 16 H. 104. In the presence of this fact upon the record, the court cannot presume the corporators are citizens of West Virginia. It was not a *W.* Va. corporation by any act. 1 Black, 286.